

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

PLASTERERS' LOCAL UNION No. 79, OPERATIVE PLASTERERS'  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION,  
AFL-CIO, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD, Respondent  
and

TEXAS STATE TILE & TERRAZZO COMPANY, INC., *et al.*,  
Intervenors

*On Petition To Review and Set Aside and on Cross-Application for  
Enforcement of an Order of the National Labor Relations Board*

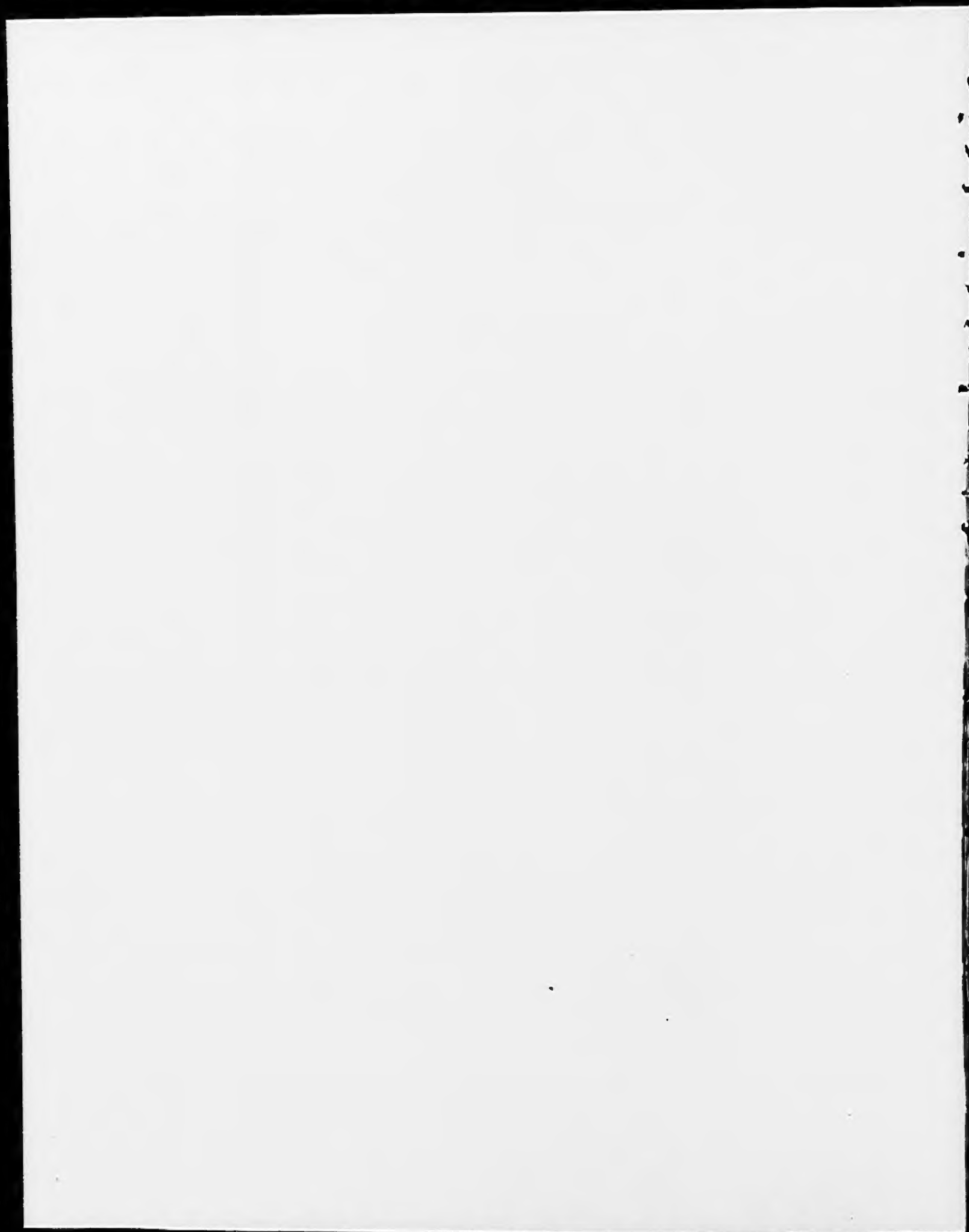
PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR  
REHEARING, AND SUGGESTION FOR REHEARING EN BANC

United States Court of Appeals  
for the District of Columbia Circuit

FILED JUL 31 1970

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No. 22,073

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PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR  
REHEARING, AND SUGGESTION FOR REHEARING EN BANC

---

Pursuant to Rules 35 and 40, Federal Rules of Appellate Procedure, and Rule 14 of the Rules of this Court, the National Labor Relations Board respectfully petitions this Court to grant rehearing, and suggests rehearing *en banc*, of the decision and judgment entered in this case on June 30, 1970, by a panel of the Court (Circuit Judges Leventhal and McGowan, with Circuit Judge MacKinnon dissenting). That decision, which reverses Board precedent of over 20 years standing, holds that the Board is without jurisdiction to determine a jurisdictional dispute in a Sec-



tion 10(k) proceeding where the two unions to the dispute, but not the employer who assigned the work which precipitated the dispute, have agreed upon a voluntary method of adjustment. The Board submits that the panel's action is contrary to decisions of both this Court and other courts of appeals, is unsupported by the legislative history of the Act upon which it relies, and constitutes an "unreasonable interpretation of the Act" (sl. op., p. 39, dissent of Judge MacKinnon). In the circumstances, and including the division among the members of the panel, rehearing *en banc* is particularly appropriate. In support of the petition for rehearing we rely on the views expressed in Judge MacKinnon's dissent and add the following observations.

1. Following picketing by Plasterers against tile contractors Texas State and Martini for the conceded purpose of forcing them to change the assignment of disputed work to employees represented by Plasterers rather than Tile Setters then employed by the contractors, the Board held a hearing pursuant to Section 10(k) of the Act. It determined that employees represented by Tile Setters were entitled to perform the work and, accordingly, the Board rendered an affirmative award of the work to those employees. When Plasterers refused to accede to this award, the Board, in the subsequent unfair labor practice proceeding, found that the Plasterers' picketing was conduct proscribed by Section 8(b)(4)(i) and (ii)(D) of the Act. The Board also rejected Plasterers' renewed contention that the Board was without jurisdiction to hear and determine the dispute in a Section 10(k) proceeding, because the two unions had agreed upon a voluntary method of adjusting the dispute, the assent to the method by the employer assigning the work not being required under that section.

2. For over 20 years, decisions of the Board and federal courts have recognized that the employer must agree to be bound by the results of a private dispute-settling mechanism before the Board may be divested of jurisdiction to determine the dispute under Section 10(k) of the Act (see authorities cited, *sl. op.*, pp. 29-30, nn. 1 and 2). In the light of this history, the Supreme Court's repeated admonition that, although the ultimate responsibility for the construction of a statute rests with the courts, the determinations of an administrative agency, such as the Board, "are entitled to great weight" (*F.T.C. v. Texaco*, 393 U.S. 223, 226 (1968)), has special significance. Indeed, on one occasion when this Court thought that the Board had departed from this settled interpretation of the Act it held, *per curiam*, that the Board was obligated to determine the dispute under Section 10(k) in a case where all of the unions, but not the employers, were bound to the settlement procedures of the National Joint Board. *Quinn, and Riggers and Machinery Erectors, Local 575 v. N.L.R.B. (Don Cartage Co.)*, 61 LRRM 2690 (1966). See *Millwrights Local Union No. 1102, United Brotherhood of Carpenters, etc. (Don Cartage Co.)*, supplementing 154 NLRB 513, 515, 521 (1965). In a concurring opinion, Chief Judge Bazelon specifically rejected the Board's reason for refusing to determine the dispute—that the employers might agree to submit the dispute to the newly reconstituted Joint Board—stating:

But the employers have consistently refused to be bound by the procedures of the Joint Board. This was shown both at the time the settlement was approved [by the NLRB over the employers' objections] and more recently upon remand to the Board to adduce new evidence to prove the opposite. Thus the sole reason which the Board offered for its action fails.

Other courts of appeals<sup>1</sup> have accepted the view that it is the Board's duty to determine the jurisdictional dispute under 10(k) if the employer involved in the dispute has not agreed to be bound by an alternative method of adjustment. The basic premises on which the majority's decision in the instant case rests do not warrant displacement of the Board's long-standing interpretation of the Act.

3. The central premise of the majority's decision is that "it is not the employer but the rival unions (or other employee groups) who are the parties to the jurisdictional dispute—", that the employer is a neutral in such a dispute, and the "purpose of protecting the neutral employer is fully served by any binding settlement between the disputing employee groups" (slip op., pp. 12, 16). This premise not only overlooks economic realities but as Judge MacKinnon points out, misreads the relevant statutory provisions (sl. op., pp. 36-37).

There are, to be sure, jurisdictional disputes where the employer may be indifferent as to which group of the competing employees performs the work. But there are many disputes where the employer's economic interests will be directly affected by the assignment and in no meaningful sense can it be said that he is a neutral in the dispute or indifferent to its resolution. It is his assignment that is being challenged. A change in the Assignment of the work in dispute may entail such factors as different terms or conditions of employment, replacement of employees with outsiders, higher wages or costs or even the displacement of the employer himself

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<sup>1</sup>See *N.L.R.B. v. Local 825, Int'l Union of Operating Engineers, AFL-CIO (White Construction Co.)*, 410 F.2d 5, 9, n. 2 (C.A. 3, 1969) (citing Board decision in instant case); *N.L.R.B. v. Int'l Union of Operating Engineers, AFL-CIO (Nichols Electric Co.)*, 326 F.2d 213, 216 (C.A. 3, 1964); *Local 450, Int'l Union of Operating Engineers, AFL-CIO (Slone Industrial Painters) v. Elliott*, 256 F.2d 630, 636 (C.A. 5, 1958); *New Orleans Typographical Union No. 17 v. N.L.R.B.*, 368 F.2d 755, 763 (C.A. 5, 1966).



if he is a contractor on a project. To characterize the employer caught in the middle of such a dispute as a "neutral" simply loses sight of the practical and economic realities of the situation. In the instant case, for example, neither Texas State nor Martini has an agreement with Plasterers—both had a contract with Tile Setters specifically governing the work in dispute and Texas State employs no plasterers. Indeed, the majority opinion implicitly recognizes that jurisdictional disputes may and do directly impinge upon the economic interest of employers who become involved in them. "The construction industry [where many of these disputes arise] is typically beset by conflicts in which a group of employees and their employers (sometimes, of course, subcontractors) are likely to be aligned with each other as against another alignment of a different group of employees and their employers" (sl. op., p. 27, n. 27). And, as noted by Dr. John T. Dunlop, "The fact that some unions work exclusively, as a matter of policy or custom, for particular contractors tends to convert competition among contractors also into jurisdictional disputes between unions.\* \* \* More accurately, the dispute is between a contractor and a union on one side against another contractor and union on the other side." Dunlop, "Jurisdictional Disputes", New York University Second Annual Conference on Labor, p. 447, at pp. 486-487.<sup>2</sup> Although Congress was clearly concerned with protecting the employer who cared not which group of employees performed the disputed work (364 U.S. at 580-581), it undoubtedly was aware of more than just the "garden variety" of juris-

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<sup>2</sup>See also, Gaba, "Jurisdictional Disputes in the Building Trades," 37 Texas L.R. 859, 860 (1959); Note, "Determination of Jurisdictional Disputes under Section 10(k): Conflict with other Provisions of the National Labor Relations Act", 61 Columbia L.R. 1142, 1156 (1961) ("[I]n the majority of disputes the employer does not have contractual relations with both unions and is probably not neutral. . .").

dictional disputes (sl. op., p. 32) for it did not limit determinations under Section 10(k) to those disputes where the employer was neutral and indifferent. *Lodge 68 of the International Association of Machinists (Moore Drydock Company)*, 81 NLRB 1108 (1949); *International Longshoremen's and Warehousemen's Union, Local 16 (Juneau Spruce Corp.)*, 82 NLRB 650 (1949).<sup>3</sup>

The Joint Board's inclusion of employer groups in its structure is a striking acknowledgment by the member unions of the importance of the employers' full participation in the dispute settlement processes as well as of their vital interest in the outcome of Joint Board's decision (sl. op., p. 36). "The National Joint Board has demonstrated that both contractors and unions have a genuine common interest in jurisdictional issues, and both have a vital contribution to make to their orderly settlement." Dunlop, *Jurisdictional Problems in Construction Industry*, 40 LRRM 18, 19 (1957).

4. In addition to the foregoing considerations, the text of Section 10(k) itself supports the Board's position that "the parties to such dispute" refers to the employer as well as the employee or union groups. As Judge MacKinnon states:

The words "such dispute" in section 10(k) *refer to the dispute out of which the unfair labor practice arose* and the statute provides that is the jurisdictional *strike* in which the striking union attempts to force the employer to assign particular work to employees in its union. There is no ques-

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<sup>3</sup>See *Dooley v. Highway Truckdrivers & Helpers, Local 107*, 182 F. Supp. 297, 306 (D. Del., 1960) ("The fact that an employer is not simply a neutral victim in a contest between unions, but is actively interested in having work assigned to one union rather than to another, does not make Section 8(b)(4)(D) inoperative").

tion that the employer is a party to that dispute. In fact, an employer is a necessary party to any dispute involving an unfair labor practice under section 8(b)(4)(D) by its very definition. Clearly the unfair labor practice arises out of the *strike*. More remotely the jurisdictional strike in many cases arises out of the jurisdictional *dispute* but no unfair labor practice charge under section 8(b)(4)(D) ever arose solely out of a jurisdictional dispute between two unions. It requires "a strike" that involves an employer as one party. [Sl. op., p. 36, emphasis in original; footnote omitted.]

5. The majority opinion finds "persuasive evidence" for its view in the "fact that the employer is not bound by a 10(k) determination of the Board" (sl. op., p. 12). It is, of course, correct to say that an employer is not bound by the Board's 10(k) award in the sense that there is no statutory provision to compel the employer to abide by it. Parenthetically, this factor certainly does not lessen the employer's direct interest in the resolution of the dispute nor does it relegate him to the status of a disinterested neutral "who cares not how the dispute is decided but wants merely that it be decided" (sl. op., p. 17). Moreover, the successful union in the Section 10(k) proceedings will be free thereafter to engage in economic pressure to enforce the award against the unwilling employer without running afoul of Section 8(b)(4)(D). The employer is thus indirectly bound by the award and loses the Act's protection against economic sanctions brought to bear against him by the successful union.<sup>4</sup> To say that

<sup>4</sup>Section 8(b)(4)(D) makes it an unfair labor practice for a labor organization to strike to compel an employer to assign particular work to employees in a particular labor organization "unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work." Although the Board in its brief to the Supreme Court in *N.L.R.B. v. Radio & Television Broadcast Engineers Union*, 364 U.S. 573 (1961) contended, in support of its position that Section 10(k) did not require it to make an affirmative award, that the term "order" in 8(b)(4)(D) could not be expanded to include a Sec-

an employer is not a "party" to the jurisdictional dispute because the statute does not, in <sup>9</sup> terms, provide that a Board 10(k) award is binding upon him, overlooks the economic sanctions which the Act permits to be brought to bear upon him if he fails to abide by the award. The employer may disregard the award only at the risk of exposing himself to economic pressures; in any real or meaningful sense he is "bound" by the award.

6. The Board's construction of the Act fully comports with the Congressional intent to encourage, where possible, private settlement of jurisdictional disputes without resort to either strikes or Government intervention.<sup>5</sup> It is the Board's practice, consistent with the Act's require-

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tion 10(k) "determination" (Board's Brief, pp. 23-24), this view is wholly undercut by the Supreme Court's ruling that Section 10(k) requires the Board to decide jurisdictional disputes on their merits and affirmatively decide which of two competing groups is entitled to the work in dispute. If the successful union in a Section 10(k) proceeding could not thereafter strike to compel a recalcitrant employer to abide by the award, the result would make the entire Section 10(k) proceeding virtually pointless. In order to accommodate Section 10(k) as construed by *CBS* to 8(b)(4)(D), the only sensible course is to read Section 8(b)(4)(D) as encompassing, within the category of Board "orders" for violation of which a strike is permissible, the Board determination in the Section 10(k) proceedings and thereby sanctioning a strike to compel the employer to abide by the award. See *Millwrights Local Union No. 1102, United Brotherhood of Carpenters, etc. (Don Cartage Co.)*, 160 NLRB 1061, 1078, n. 19 (1966); *Penello v. Local 59, Sheet Metal Workers Int's Ass'n, AFL-CIO*, 195 F. Supp. 458, 467 (D. Del., 1961) (text at n. 54); *Local 173, Wood, Wire and Metal Lathers' Int'l Union, AFL-CIO (Newark & Essex Plastering Co.)*, 121 NLRB 1094, 1111, n. 41 (1958); *N.L.R.B. v. Local No. 825, Int'l Union of Operating Engineers, supra*, 410 F.2d at 10-11; cf. *Nat'l Ass'n of Broadcast Engineers, etc. (Nat'l Broadcasting Co., Inc.)*, *supra*, 105 NLRB at 364-365.

<sup>5</sup>The majority's reliance upon the views of Senators Morse and Murray (sl. op., pp. 17-18) is misplaced. Congress rejected the more restrictive view of jurisdictional disputes mentioned by Senators Morse and Murray who would have limited 8(b)(4)(D) to disputes between unions, which they felt would settle disputes "within

ments, that if all the parties to the dispute have agreed upon a method of settlement, not to hold a 10(k) hearing, even if one or more of the parties, including the employer, has repudiated either the agreed-upon method or a private settlement of the dispute. See *A. W. Lee, Inc.*, 113 NLRB 947, 953-954 (1955); *Wm. F. Traylor*, 97 NLRB 1003, 1006-1007 (1952). If the striking union refuses to abide by the results of the private settlement the Board will proceed go an 8(b)(4)(D) hearing. *Wood, Wire & Metal Lathers Int'l Union, Local Union No. 2 (Acoustical Contractors Ass'n of Cleveland)*, 119 NLRB 1345 (1958); *N.L.R.B. v. Local 825, Int'l Union of Operating Engineers*, *supra*. To do otherwise, reasons the Board, "would be to condone and sanction the [parties'] breach of that agreement. This would tend to discourage and render worthless the making of such agreements, contrary to the statutory purpose to encourage the voluntary adjustment of jurisdictional disputes." *Wm. F. Traylor*, *supra*, 97 NLRB at 1006-1007. See also, *Nat'l Ass'n of Broadcast Engineers, etc. (Nat'l Broadcasting Co., Inc.)*, 105 NLRB 355, 364-365 (1953). The Board's position thus encourages the parties to live by their agreements, thereby strengthening the private forums for settling disputes which Congress hoped would be established, and ensures, through the participation of all parties including the employer, that the decisions reached will tend to be more acceptable to all affected. However, the majority's holding may well spawn consequences which will not be as salutary if, when the unions

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their own ranks" (sl. op., p. 19, n. 20). Thus, the remarks of these Senators, reflecting as they do a different view of jurisdictional strikes than Congress ultimately adopted, should be accorded no weight. "The truth of the matter is that the legislative history of Section 10(k) does not afford any substantial assistance to its interpretation . . ." (sl. op., p. 35).

alone agree upon a method of settlement, the Board is ousted from arbitrating the dispute. A decision reached without the employer's participation, and perhaps without regard to considerations of efficiency or economy peculiar to him,<sup>6</sup> is likely to be less acceptable to him, and his resistance to it, either immediately or in future job assignments not governed by the award, will tend to foster the very jurisdictional strikes which Congress sought to prevent.<sup>7</sup> Such a result does little to advance the Congressional hope underlying 10(k), "that jurisdictional disputes be settled permanently" (364 U.S. at 576-577).

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<sup>6</sup>Indeed, the Joint Board's provisions subordinate considerations of efficiency to trade practices and thereby make employers reluctant to accept its jurisdiction. See Note, "The NLRB and Deference to Arbitration," 77 Yale L.J. 1191, 1200-1201, 1203-1204 (1969). It is difficult to imagine that unions, now freed of the Board's restraint which imposed the employer's participation in their agreed upon method of adjustment, will be more inclined to give weight to these considerations.

<sup>7</sup>The Joint Board award in the instant case, for example, stated: "This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only" (A. 412).

## CONCLUSION

For the reasons stated, the Board respectfully requests that the Court grant rehearing or rehearing *en banc* and that after such rehearing, a judgment issue enforcing the Board's order in full.

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PETITION FOR REHEARING. AND  
SUGGESTION FOR REHEARING EN BANC,  
ON BEHALF OF TILE CONTRACTORS  
ASSOCIATION OF AMERICA, INC., TEXAS  
STATE TILE & TERRAZZO CO., AND  
MARTINI TILE & TERRAZZO CO.

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National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, et seq.)	
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STATE TILE & TERRAZZO CO., AND  
MARTINI TILE & TERRAZZO CO.

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Pursuant to Rules 35 and 40 of the Federal Rules of  
Appellate Procedure, the Tile Contractors Association of  
America, Texas State Tile and Terrazzo Co., and Martini  
Tile and Terrazzo Co., the employer intervenors in this  
proceeding, respectfully petition the Court for rehearing,

and suggest rehearing *en banc*, of the decision entered in this case on June 30, 1970, by a panel of the Court (Judges McGowan and Leventhal, with Judge MacKinnon dissenting). The panel majority held that an employer is not a party to a jurisdictional dispute within the meaning of Section 10(k) of the Act, and on that basis found invalid the consistent construction of Section 10(k) which the Board has applied for more than twenty years and applied in the instant case.

1. Section 10(k) was added to the Act, along with companion Section 8(b) (4) (D), by the Taft-Hartley Amendments of 1947.<sup>1</sup> Section 8(b) (4) (D) is the "jurisdictional dispute" provision and, in general, makes it an unfair labor practice for a union to picket or coerce an employer for an object of forcing the employer to assign work to one union or group of employees rather than another. Section 10(k) directs the Board to hear and determine a jurisdictional dispute whenever an 8(b) (4) (D) charge is filed unless "the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute." Since the enactment of Section 10(k), the Board has consistently held, as it did in the instant case (A. 20, 17 n. 3, 6), that it is divested of jurisdiction under the abstention provision of 10(k) only where the employer as well as the unions—i.e., the "parties" to the dispute in its construction—have agreed upon a voluntary method of adjustment.<sup>2</sup> The panel majority disagreed, finding that only the rival unions are "parties" to the jurisdictional dispute within the meaning of Section 10(k) and that where they have, as in the instant case, agreed upon a voluntary method of adjustment of the dispute the Board is divested of jurisdiction (sl. op. 4, 11-12).<sup>3</sup>

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<sup>1</sup> See Appendix A for the text of these statutory provisions.

<sup>2</sup> See cases cited at n. 1 of the dissenting opinion (sl. op. 29).

<sup>3</sup> The unions in the instant case were all bound to submit the dispute to the National Joint Board for the Settlement of Juris-

Because of the importance of the issue in the consistent administration of a vital provision of the Act, because of the apparent conflict with this Court's earlier decision in *Quinn, and Riggers and Machinery Erectors, Local 575 v. N.L.R.B. (Don Cartage Co.)*, 61 LRRM 2690 (Unreported decision, Nos. 19673 & 19686, March 29, 1966), and because of the disagreement within the panel here, we submit that *en banc* consideration is warranted.

2. For more than twenty years the Board has consistently applied Section 10(k) to require that the employer is a "party" to a jurisdictional dispute and must assent along with all the rival unions to a method of voluntary adjustment of the dispute before the Board is divested of jurisdiction under 10(k)'s abstention provision. In that time, except for the instant case, the Board's construction has never been challenged by any court of appeals, and indeed, has been favorably relied upon by several courts.<sup>4</sup> This Court, on one occasion when the Board departed from its settled construction because of special circumstances, has relied upon the Board's construction to order the Board to proceed under 10(k) to determine the dispute. *Quinn v. N.L.R.B., supra*.

In *Quinn*, the Court found that the Board had avoided deciding a jurisdictional dispute "by expressing the hope that the National Joint Board for Settlement of Jurisdictional Disputes—a voluntary association of which the employers here involved were not members—would resolve the jurisdictional dispute for the future." The Court reversed and remanded, holding that under these circumstances "it was the duty of the Board" to deter-

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dictional Disputes (A. 17). The employers involved were not so bound (A. 14, 20).

<sup>4</sup> See *Quinn v. N.L.R.B., supra*, 61 LRRM 2690 (D.C. Cir. 1966); *Local 450, Int'l Union of Operating Engineers v. Elliott*, 256 F.2d 630, 636 (5th Cir. 1958); *N.L.R.B. v. Local 825, Int'l Union of Op. Eng.*, 410 F.2d 5, 9, n.2 (3rd Cir. 1969) (citing the Board's decision in the instant case).

mine the dispute under 10(k).<sup>5</sup> In a concurring opinion, Chief Judge Bazelon specifically rejected the Board's deferral to the National Joint Board for resolution of the dispute, stating as follows:

But the employers have consistently refused to be bound by the procedures of the Joint Board. This was shown both at the time the settlement was approved [by the NLRB over the employers' objections] and more recently upon remand to the Board on its motion to adduce new evidence designed to prove the opposite. Thus the sole reason which the Board offered for its action falls.

Thus, the Board's construction has received affirmative recognition in the past by this and other courts. And it is plain that the Board's consistent interpretation of the statute is entitled to great weight by the courts.<sup>6</sup> In light of these factors, we submit that the Board's construction is entitled to stand in the absence of compelling reasons to the contrary. We submit that the majority opinion upsetting the Board's interpretation discloses no such compelling reasons, and that, to the contrary, Judge MacKinnon was correct in concluding in his dissent that "I thus find the majority opinion . . . to be an unreasonable interpretation of the Act and find much more reasonable the 20-year administrative interpretation . . ." (sl. op. 39).

3. The majority essentially relies upon three factors to support its view that Congress did not intend for the employer to be a "party" to a jurisdictional dispute for purposes of Section 10(k)—(1) the text of the statutory

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<sup>5</sup> The background of the *Quinn* case is set forth in the Board opinions. *Millwrights Local Union No. 1102, United Bhd. of Carpenters (Don Cartage Co.)*, 157 NLRB 10 (1966), *supplementing*, 154 NLRB 513 (1965).

<sup>6</sup> *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965); *FTC v. Mandel Brothers*, 359 U.S. 385, 391 (1959); *Union Mfg. Co. v. N.L.R.B.*, 95 App. D.C. 255, 221 F.2d 532, 536 (D.C. Cir. 1955), *cert. denied*, 349 U.S. 921.

sections, (2) language from the Supreme Court decision in *N.L.R.B. v. Radio & Television Broadcast Engineers Union (CBS)*, 364 U.S. 573 (1961), and (3) the pertinent legislative history. We submit that upon analysis, as shown below, none of these factors support the majority view and therefore fail to compel reversal of the Board's construction.

a. The majority opinion correctly reads the term "such dispute" in 10(k), in commanding the Board to abstain where "the parties to *such dispute* have . . . agreed on a method for the adjustment of the dispute", as referring to the underlying jurisdictional "dispute out of which such unfair labor practice [§ 8(b)(4)(D)] shall have arisen" (sl. op. 12). But the Court miscomprehends the text of Section 8(b)(4)(D) when it makes the bald conclusion that only the rival unions are "parties to the jurisdictional dispute" out of which the 8(b)(4)(D) charge has arisen (sl. op. 12).

Section 8(b)(4)(D), and therefore 10(k), does not become operative when there is merely a dispute between rival unions: it is operative by its terms only when one of the rival unions has broadened their disagreement by taking coercive action—a threat, a strike, or picketing—directly against the employer because he assigned the disputed work to a particular group of employees. *Carey v. Westinghouse Corp.*, 375 U.S. 261, 263-264 (1964). Therefore, as Judge MacKinnon aptly noted in the dissent, the Act's machinery is not even called into play until the "unions by their action have made him a party to their dispute" (sl. op. 36). Accordingly, the text of these statutory provisions plainly shows that the employer is a party to a jurisdictional dispute within the Act's prescriptions.<sup>7</sup>

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<sup>7</sup> Nor is the panel majority aided by the argument that the employer "is not bound by a 10(k) determination of the Board" (sl. op. 12). The employer *is* bound in a very meaningful sense in that he is subject to the full force of economic pressure if he ignores the 10(k) determination, for no 8(b)(4)(D) charge will then lie to proscribe the economic pressure. Accordingly, the employer is clearly bound by the 10(k) award in a practical sense.



b. The majority's reliance (sl. op. 15-16) upon language from the opinion in *CBS*, *supra*, 364 U.S. 573, is also misplaced. The majority seeks to draw support for its narrow view of "parties" to a jurisdictional dispute from the Court's comment that such a dispute is "between two or more groups of employees over which is entitled to do certain work for an employer." 364 U.S. at 579. To the extent that incidental comments taken from an opinion written in a different context<sup>\*</sup> carry any binding significance, that is belied in this instance because of the Supreme Court's later opinion in *Carey v. Westinghouse Corp.*, 375 U.S. 261 (1964). There the Court referred to a jurisdictional dispute as "involving two unions *and the employer*." 375 U.S. at 263 (emphasis added). Thus, the language in *Carey* negates the assumption that the Court in *CBS* meant to read employers out of jurisdictional disputes.

c. The majority's reliance on the legislative history of the pertinent statutory provisions is erroneous because the meager legislative history is not dispositive of the issue here and the majority has misconceived the import of those references it relied upon. First, a thorough examination of the debates and reports discloses absolutely no discussion of what Congress meant by the term "parties" in Section 10(k). Moreover, the few discussions in the two houses relative to the necessity for protecting employers from jurisdictional strikes on the part of disputing unions are in themselves hardly dispositive of an intent either to include or exclude the employer as a "party" to the jurisdictional dispute. Thus the legislative history does not specifically touch on the point in issue here. As Judge MacKinnon stated in the dissent (sl. op. 35):

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<sup>\*</sup> *CBS* raised an entirely different question from the one here. There the Court decided only *how* the Board must decide cases which are properly before it under Section 10(k); the Court ventured no opinion on the problems here of *when* is a case appropriately before the Board under 10(k).

The truth of the matter is that the legislative history of section 10(k) does not afford any substantial assistance to its interpretation and the weakness of the majority opinion is demonstrated by its assertion that it does.

Second, the legislative history particularly relied upon by the majority does not provide support for its interpretation. The majority places great emphasis on the expressed hope of Senator Morse, and others, that 10(k) would encourage unions to set up machinery for the settlement of such controversies within their own ranks (sl. op. 17-19). But it is clear that Senator Morse had in mind the settlement of disputes by unions anterior to a strike and thus before the Act's provisions would come into play: in the speech quoted by the majority (sl. op. 18), Senator Morse specifically referred to union machinery "settling such disputes *short of economic action*." (Emphasis added). Thus, Senator Morse spoke of the hope that unions could in most cases eliminate the dispute among themselves *prior* to embroiling the employer into the dispute *via* coercive economic action: his comments do not indicate that once the coercive action is instituted the unions could under 10(k) settle the dispute solely among themselves without the employer's participation. This "incentive" to unions to settle the disputes among themselves in order to avoid the Act's machinery is equally present whether or not the employer is considered a party for purposes of 10(k).

4. The fundamental error in the majority opinion, however, is its assumption that Congress recognized the employer solely as a neutral whose interests would be "fully served by any binding settlement between the disputing employee groups" without his participation (sl. op. 12, 16-17). This assumption finds no rational basis in the statute or legislative history, overlooks economic realities, and is contrary to the practice that has developed under voluntary adjustment groups.

It is plain that the employer in most jurisdictional disputes is not merely a disinterested neutral "who cares not how the dispute is decided but wants merely that it be decided" (sl. op. 16-17). The dispute occurs when the employer initiates the assignment of work to one group or another; and generally, as in the instant case, the employer assigns the work to a particular group because he prefers that group for reasons of efficiency, economy, ability, or the like. Indeed, the employers here, as is often the case, assigned the work to their own employees, who were represented by the Tile Setters Union, pursuant to their collective bargaining agreement with that union, rather than assign the work to some outside group represented by another union (A. 21, 22, 5, 6). In this usual circumstance, when the employer's assignment is challenged by another union's claim for the work, the employer's ability to operate his business according to his best judgment is threatened, and his interest in the resolution of the dispute is obviously not that of a disinterested neutral.

It is well recognized, therefore, that "an employer is not necessarily a neutral party unconcerned with which group performs the work. . . ." <sup>9</sup> Indeed, the National Joint Board's inclusion of employer groups and provision for employer representation emphasizes the importance of employer participation in the determination of such disputes. As one of the leading figures in the development of the Joint Board has said, "The National Joint Board has demonstrated that both contractors and unions have a genuine common interest in jurisdictional issues, and both have a vital contribution to make to their orderly settlement." <sup>10</sup>

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<sup>9</sup> O'Donoghue, *Jurisdictional Disputes in the Construction Industry*, 52 Geo. L.J. 314, 320-321 (1964). See Note, 61 Col. L. Rev. 1142, 1156 (1961).

<sup>10</sup> Dunlop, *Jurisdictional Problems in Construction Industry*, 40 LRRM 18, 19 (1957).

Nor can it be assumed that Congress enacted 10(k) without recognition of the employer's vital interest in the outcome of jurisdictional disputes. The statute itself evidences Congress' recognition that jurisdictional disputes occur outside the framework of a neutral employer caught between warring unions. Pursuant to an amendment offered by Senator Taft, Congress changed Section 8(b)(4)(D) in Conference to expand the scope of the section to protect work assignments to employees *not represented by a labor organization* as well as assignments to organized employees;<sup>11</sup> thus, Congress recognized that a jurisdictional dispute could arise when an employer preferred to assign work to his own unrepresented employees, and that he was entitled to the Act's protections when he did so.

Accordingly, contrary to the majority, it is plain that Congress intended the jurisdictional dispute provisions to apply without regard to the employer's neutrality. In light of this, and in light of the employer's vital interest in the outcome of the dispute settlement and the recognition of the Joint Board that the employer's participation is essential to an orderly settlement, we submit that the majority erred in concluding that the employer's interests are fully served without his participation in the settlement.

5. Moreover, the majority misplaces reliance upon the National Joint Board as an organization which meaning-

<sup>11</sup> Section 8(b)(4)(D) as it passed the Senate proscribed strikes and other coercion designed to force "any employer to assign to *members of a particular labor organization* work tasks assigned by an employer to *members of some other labor organization*. . . ." H.R. 3020, as passed Senate, 80th Cong., 1st Sess., pp. 81-83, in I Leg. Hist. 239-241 (1947) (emphasis supplied). The bill as enacted prohibited such coercion designed to force "an employer to assign particular work to *employees in a particular labor organization or in a particular trade, craft, or class* rather than to employees in another labor organization or in another trade, craft, or class. . . ." Section 8(b)(4)(D) (emphasis supplied). See the explanation of Senator Taft in this regard, 93 Cong. Rec. 7002 (Daily ed., June 12, 1947), in II Leg. Hist. 1624 (1947).

fully "takes into account factors of economy and efficiency of operation" in rendering its decisions (sl. op. 27). To the contrary, the Joint Board's decisions subordinate such factors to considerations of precedent and practice, as in the instant case, and as a result employers have been unwilling to bind themselves to its jurisdiction.<sup>12</sup> Because of the Joint Board's failure to recognize management considerations, the Associated General Contractors and four national specialty contractor associations withdrew from the Joint Board on September 30, 1969.<sup>13</sup>

Under the majority's ruling, however, the Joint Board will have exclusive control over the work assignments of these very contractors who withdrew because of their dissatisfaction with that body's consideration of their necessities.<sup>14</sup> It is indeed unlikely that in the future the Joint Board would respond more favorably to an employer's considerations in light of the majority's ruling here that the employer has no part in the determination of the dispute.

Considered in this light, the majority's interpretation is most inconceivable. For it should require the plainest statutory language to find, as did the majority, that Congress intended to place the ultimate assignment of an employer's work force in the hands of two unions. There is no such language, and we submit that instead the Board is correct in holding that Congress intended to place the ultimate determination of a disputed work assignment, where it is the subject of a strike, in the hands of the Board unless the *employer and the unions* can privately achieve an accommodation of their differences.

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<sup>12</sup> See Note, 77 Yale L.J. 1191, 1200-1201, n. 52, 1203-1204 (1968); K. Strand, *Jurisdictional Disputes in Construction* 93 (1961).

<sup>13</sup> Construction Labor Report, No. 732, Oct. 1, 1969 (BNA).

<sup>14</sup> The Tile Contractors Association of America withdrew from the Joint Board in 1959.

CONCLUSION

For the reasons stated, the employer intervenors in this proceeding respectfully request that the Court grant rehearing or rehearing *en banc* and that, after such rehearing, issue a judgment enforcing the Board's order in full.

Respectfully submitted,

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August 1970

## APPENDIX A

The applicable provisions of the National Labor Relations Act are as follows:

Section 8(b) (4) (D): It shall be an unfair labor practice for a labor organization or its agents—

\* \* \*

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

\* \* \*

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class, rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: \* \* \*

\* \* \*

Section 10(k): Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

APPENDIX

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,073

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PLASTERERS LOCAL UNION No. 79, OPERATIVE PLASTERERS AND  
CEMENT MASONS INTERNATIONAL ASSOCIATION, AFL-CIO,  
*Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

and

TEXAS STATE TILE & TERRAZZO COMPANY, INC., ET AL.,  
*Intervenors,*

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On Appeal from a Decision and Order of the  
National Labor Relations Board

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United States Court of Appeals

for the District of Columbia Circuit

FILED SEP 12 1969

*Nathan J. Paulson*  
CLERK





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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,073

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PLASTERERS LOCAL UNION No. 79, OPERATIVE PLASTERERS AND  
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On Appeal from a Decision and Order of the  
National Labor Relations Board

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## APPENDIX

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### Decision and Order

Upon charges filed on January 30, 1967, and February 7, 1967, by Southwestern Construction Company, herein called Southwestern, and on March 17, 1967, by Martini Tile and Terrazzo Company, herein called Martini, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 23, issued a complaint on September 14, 1967, against Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International

Association of Houston, Texas, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices with the meaning of Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act, as amended. In substance, the complaint alleges that the Respondent violated the Act by engaging in picketing and other activities at the M. D. Anderson Library project, Houston, Texas, and at the Rainbo Baking Company, Houston, Texas, with an object of forcing or requiring Southwestern and/or its subcontractor, Texas State Tile and Terrazzo, Inc., herein called Texas Tile, and Martini, to assign the work of applying to walls a coat of Portland cement mortar upon which tile was to be installed to employees represented by the Respondent, rather than to employees represented by Tile, Terrazzo and Marble Setters Local Union No. 20, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, herein called the Tile Setters. The Respondent filed an answer admitting certain allegations of the complaint and denying certain other allegations.

On October 30, 1967, at a hearing held pursuant to the Complaint and Notice of Hearing, the parties agree to submit this proceeding directly to the Board for the issuance of findings of fact, conclusions of law, and a Decision and Order. It was agreed that the entire record in this case shall consist of: The Decision and Determination of Disputes, the transcript of testimony, exhibits, and formal papers in the prior 10(k) proceeding,<sup>2</sup> and the transcript, exhibits and formal papers in the present proceeding. The

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<sup>2</sup> On August 22, 1967, in a proceeding pursuant to Section 10(k), the Board issued its Decision and Determination of Disputes (167 NLRB No. 23), in which the Board concluded that employees of Texas Tile and Martini represented by the Tile Setters were entitled to perform the work in dispute. At no time since the issuance of the Board's Decision and Determination of Disputes has the Respondent given written notification to the Regional Director for Region 23 that it would refrain from forcing or requiring Texas Tile and/or Martini, by means proscribed in Section 8(b)(4)(D), to assign the work in dispute to plasterers rather than tile setters.

parties waived a hearing before a Trial Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, and the issuance of a Trial Examiner's Decision. On April 22, 1968 the General Counsel filed a Motion to Transfer Case to the Board. On April 24, 1968, the Board granted the motion.<sup>3</sup>

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Briefs were filed by the Respondents, and jointly by Texas Tile, Martini, the Tile Setters and the Intervenors, which have been duly considered.

Upon the entire record in these cases, the Board makes the following:

#### FINDINGS OF FACT

##### 1. *The businesses of the Employers.*

The parties stipulated that:

A. Texas Tile, a Texas corporation with its principal office and place of business located in Houston, Texas, is engaged in the business of installing tile and terrazzo. During the 12-month period prior to the hearing Texas Tile purchased and received goods, materials, and supplies valued in excess of \$50,000, which materials were shipped from points outside the State of Texas directly to Texas Tile at points within the State of Texas.

B. Martini, a Texas corporation with its principal office and place of business located in Houston, Texas, is engaged in the business of installing tile and terrazzo. During the 12-month period prior to the hearing Martini purchased and received goods, materials, and supplies valued in excess of \$50,000, which materials were shipped from points

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<sup>3</sup> Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.



outside the State of Texas directly to Martini at points within the State of Texas.

We find that Texas Tile and Martini are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### *2. The labor organizations involved.*

The parties stipulated, and we find, that the Plasters and the Tile Setters are labor organizations within the meaning of Section 2(5) of the Act.

### *3. The Unfair Labor Practices.*

#### *A. The M. D. Anderson Library Job*

In 1965, Southwestern, a general contractor, entered into a contract with the University of Houston to construct an addition to the M. D. Anderson Library. Southwestern let a subcontract for the tile and terrazzo work to Texas Tile, which commenced work in August 1966. Texas Tile has a collective-bargaining agreement with the Tile Setters and assigned the work to employees represented by the Tile Setters. At the outset of work in August 1966, the Tile Setters began to apply a coat of Portland cement mortar to receive tile. The Respondent claimed the work. The matter was sent to the National Joint Board for the Settlement of Jurisdictional Disputes. On November 10, 1966, the Joint Board rendered a decision awarding the disputed work to the Respondent. Texas Tile was not bound by the Joint Board decision. The record shows, and we find, that thereafter, the Respondent, through its representative, George Longshore, made several attempts to obtain work in question but Texas Tile and Tile Setters refused to accede to its demands. On January 24, 1967, the Respondent established a picket at the jobsite. The picket sign read as follows:

Plasterers Local 79 protest the refusal of Texas State Tile and Terrazzo to comply with the National Joint Board. Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or concerted refusal to work.

In fact, all crafts working on the job honored the picket, causing a complete work stoppage. The picket was removed after an injunction was granted by the United States District Court for the Southern District of Texas, Houston Division, on February 20, 1967. We further find that the Respondent engaged in such picketing with an object of forcing or requiring Texas Tile to change the assignment of the disputed work from its own employees, who were members of or represented by the Tile Setters, to employees who were members of or represented by the Respondent.

*B. The Rainbo Job.*

Martini has a contract with the Rainbo Baking Company in Houston, Texas, to furnish labor and materials for the installation of ceramic tile. Martini delivered its materials to the jobsite on or about March 15, 1967, and began work the next day. Martini has a collective-bargaining agreement with the Tile Setters and assigned the work in dispute to employees represented by the Tile Setters.

On the morning of March 17, 1967, the Respondent established a picket line at the jobsite. The picket sign read as follows:

Plasterers Local 79, protests substandard conditions  
Martini Tile Co., Inc., Local Union 79 does not intend  
by this picket line to induce or encourage the employees of any other employer to engage in a strike or a concerted refusal to work.

Shortly after the establishment of the picket, officials of Rainbo requested Martini to remove its employees from

the premises. Martini complied and a work stoppage ensued. Thereafter, the Respondent removed the picket and picketing was not resumed although Martini returned and continued work on the job. Respondent has stipulated, and we find, that the Respondent engaged in such picketing with an object of forcing or requiring Martini to change the assignment of the disputed work from its own employees, who were members of or represented by the Tile Setters, to employees who were members of or represented by the Respondent.

### *C. Respondent's Contentions*

The Respondent's defense herein, as argued in its brief, is in the nature of a request for reconsideration of the Board's Decision and Determination of Disputes issued in the 10(k) proceeding. It argues, *inter alia*, that the word "parties" as used in Section 10(k) does not mean the employer and the two unions or groups of employees claiming the work in dispute need agree upon a method for the voluntary adjustment of the dispute for the Board to quash the Notice of Hearing, but only that the two Unions or groups of employees need agree upon such a method of adjustment, and that since Respondent and the Tile Setters are both subject to the Joint Board's jurisdiction, the Notice of Hearing should have been quashed. We reiterate, however, our consistent interpretation of Section 10(k) that the employer controlling the work assignment as well as the rival unions involved comprise the "parties to such dispute," and all must approve and enter into a voluntary adjustment procedure in order to preclude a hearing and determination pursuant to that Section.<sup>4</sup> Moreover, we note that the Board's longstanding interpretation of this

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<sup>4</sup> *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 428, AFL (Philadelphia Association)*, 108 NLRB 186, 195-8, *Local 450, and Joiners of America, Local 1622 (O.E. Karst)*, 139 NLRB 591. See also our Decision in the prior 10(k) proceeding, 167 NLRB No. 23, and the cases cited in footnote No. 4 therein.

aspect of Section 10(k) was neither questioned nor disturbed when the National Labor Relations Act was most recently amended by Congress in 1959. Accordingly, we find no merit in this contention of the Respondent. We have examined the remaining arguments in support of the Respondent's position, and also find nothing therein which was not previously considered by the Board. We perceive no reason for disturbing the prior Decision and Determination of Disputes.<sup>5</sup>

On the basis of the foregoing facts, and the entire record in these cases, we find that the Respondent's picketing of the M. D. Anderson and Rainbo projects as described above was for a proscribed object and in violation of Section 8(b)(4)(i) and (ii) (D).

#### *4. The Effect of the Unfair Labor Practices Upon Commerce.*

The activities of the Respondent set forth in section 3, above, occurring in connection with the operations of the Employers set forth in section 1, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### *5. The Remedy*

Having found that the Respondent violated Section 8 (b)(4)(i) and (ii)(D) of the Act, we shall order it to cease

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<sup>5</sup> By motions made on February 21, 1968, "To Correct Record on Material Omissions," and on May 22, 1968, "To Correct 10(k) Record on Material Misstatement", Texas Tile, Martini and the Tile Setters seek to supplement the 10(k) record with various evidentiary matter that is in the nature of new evidence, which is not shown to be newly discovered and previously unavailable. It is clearly not a "correction" of the 10(k) record, or a supplying of evidence to fill an obvious omission in the record. The motions are hereby denied. Previously, on January 17, 1968, the Board denied a "Motion to Re-open 10(k) Record on Issuance of Nationwide Order" filed by the Tile Setters and the two employers, on the ground, *inter alia*, that the assertion that the evidence offered therein was newly discovered and previously unavailable was unsupported.

and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

#### CONCLUSIONS OF LAW

1. Texas Tile and Martini are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent and the Tile Setters are labor organization within the meaning of Section 2(5) of the Act.

3. By its picketing at the M. D. Anderson Library job, Houston, Texas, with an object of forcing or requiring Texas Tile to assign certain work (applying to walls a coat of Portland cement mortar upon which tile was to be installed) to employees represented by the Respondent rather than to employees represented by the Tile Setters, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

4. By its picketing of the Rainbo Baking Company job, Houston, Texas, with an object of forcing or requiring Martini to assign certain work (applying to walls a coat of Portland cement mortar upon which tile was to be installed) to employees represented by the Respondent rather than to employees represented by the Tile Setters, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas its officers, agents, and representatives, shall:

1. Cease and desist from engaging in, or inducing or encouraging individuals employed by Texas State Tile and Terrazzo, Inc., or Martini Tile and Terrazzo Company, or any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any materials or to perform any services; and from threatening, coercing, or restraining the aforesaid persons, where an object in either case is to force or require Texas State Tile and Terrazzo, Inc., or Martini Tile and Terrazzo Company, to assign the work of applying to walls a coat of Portland cement mortar upon which tile is to be installed at the M. D. Anderson Library and Rainbo jobs, to employees represented by the Respondent rather than to employees represented by Tile, Terrazzo and Marble Setters Local Union No. 20, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO.

2. Take the following affirmative action the Board finds will effectuate the policies of the Act:

(a) Post at its business offices, meeting halls, and all other places where notices to employees are customarily posted, in Houston, Texas, copies of the attached notice marked "Appendix".<sup>6</sup> Copies of said notice, on forms provided by the Regional Director for Region 23, shall, after being duly signed by the Union's representative, be posted by the Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for Region 23 for posting by Texas State Tile

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<sup>6</sup> In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decision of the United States Court of Appeals, Enforcing an Order."

and Terrazzo, Inc., and Martini Tile and Terrazzo Company, the Companies willing, at locations where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 23, in writing, within 10 days from the date of this order, what steps have been taken to comply herewith.

Dated, Washington, D. C., June 27, 1968

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JOHN H. FANNING, Member

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HOWARD JENKINS, JR., Member

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SAM ZAGORIA, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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APPENDIX  
NOTICE TO ALL OUR MEMBERS  
PURSUANT TO  
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT engage in, or induce or encourage individuals employed by Texas State Tile and Terrazzo, Inc., or Martini Tile and Terrazzo Company, or any other person engaged in commerce, or in an industry affecting commerce, to engage in, a strike or refusal in the course of their employment to use, manufacture,

process, transport, or otherwise handle or work on any materials, or to perform any services, or threaten, coerce, or restrain the aforesaid persons, where an object in either case is to force or require Texas State Tile and Terrazzo, Inc., or Martini Tile and Terrazzo Company, to assign the work of applying to walls a coat of Portland cement mortar upon which tile is to be installed, at the M. D. Anderson Library job or at the Rainbo Baking Company, Houston, Texas, to employees represented by this Union, rather than to employees represented by Tile, Terrazzo and Marble Setters Local Union No. 20, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO.

PLASTERERS LOCAL UNION No. 79,  
OPERATIVE PLASTERERS AND CEMENT  
MASONS INTERNATIONAL ASSOCIATION  
OF HOUSTON, TEXAS  
(Labor Organization)

Dated .....By .....  
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 6617 Federal Office Building, 515 Rusk Avenue, Houston, Texas 77002, (Tel. No. 228-4296), if they have any questions concerning this notice or compliance with its provisions.

#### **Decision and Determination of Disputes**

This is a consolidated proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Southwestern Construction Company, herein called Southwestern, and Martini Tile and Terrazzo Company, herein called Martini, alleging violations of Section



8(b)(4)(D) of the Act by Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas, herein called the Plasterers. Pursuant to notice, a hearing was held on April 6, 7, 10, 11, 12, 13, and 14, 1967, before Donald H. Hicks, Hearing Officer. Southwestern, Martini, the Plasterers, Texas State Tile and Terrazzo, Inc., herein called Texas Tile, and Tile, Terrazzo and Marble Setters Local Union No. 20, herein called the Tile Setters, appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. All parties filed briefs which have been duly considered.

Upon the entire record in these cases, the Board makes the following findings:

*1. The businesses of the Employers.*

The parties stipulated that:

A. Texas Tile, a Texas corporation with its principal office and place of business located in Houston, Texas, is engaged in the business of installing tile and terrazzo. During the 12-month period prior to the hearing, Texas Tile purchased and received goods, materials, and supplies valued in excess of \$50,000, which materials were shipped from points outside the State of Texas directly to Texas Tile at points within the State of Texas.

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<sup>1</sup> The Plasterers and the Tile Setters are parties to the dispute. While Southwestern is the Charging Party in Case No. 23-CD-133, Texas Tile intervened as the employer that assigned the work in that case to the Tile Setters. It participated jointly with Martini and the Tile Setters.

B. Martini, a Texas corporation with its principal office and place of business located in Houston, Texas, is engaged in the business of installing tile and terrazzo. During the 12-month period prior to the hearing, Martini purchased and received goods, materials, and supplies valued in excess of \$50,000, which materials were shipped from points outside the State of Texas directly to Martini at points within the State of Texas.

We find that Texas Tile and Martini are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

*2. The labor organizations involved.*

The parties stipulated, and we find, that the Plasters and the Tile Setters are labor organizations within the meaning of Section 2(5) of the Act.

*3. The dispute.*

A. The work in dispute is the application to walls of a coat of Portland cement mortar upon which tile was to be installed.

*B. The basic facts.*

CASE No. 23-CD-133

In 1965, Southwestern, a general contractor, entered into a contract with the University of Houston to construct an addition to the M. D. Anderson Library. Southwestern let a subcontract for the tile and terrazzo work to Texas Tile, which commenced work in August 1966. Texas Tile has a collective-bargaining agreement with the Tile Setters and assigned the work to employees represented by the Tile Setters. At the outset of work in August 1966, the Tile Setters began to apply a coat of Portland cement mortar to receive tile. The Plasterers claimed the work. The matter was sent to the National Joint Board for the Settlement of Jurisdictional Disputes. On November 10, 1966, the Joint Board found that "the work in dispute is governed by the agreement of August 22, 1917, and shall be assigned

to Plasterers, except that any coat to be applied wet the same day under tile shall be placed by the Tile Setters. In the thin-set or adhesive method of applying tile to walls and ceilings, the Plasterers shall apply the first and second coats of mortar, that is the scratch coat and plumb coat. The Plasterers shall plumb, rod and square all walls, rod and level all ceilings and the Tile Setters shall apply the final setting bed for the Tile." Texas Tile was not bound by the Joint Board decision.

Thereafter, the Plasterers made several attempts to obtain the work in question but the Tile Setters refused to accede to their demands. On January 24, 1967, the Plasterers established a picket at the jobsite. The picket sign read as follows: "Plasterers Local 79 protest the refusal of Texas State Tile and Terrazzo to comply with National Joint Board. Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or concerted refusal to work." All crafts working on the job honored the picket. The picket was removed after an injunction was granted by the United States District Court for the Southern District of Texas, Houston Division, on February 20, 1967. The work in dispute was completed by the Tile Setters.

The immediate work involved at the time of the picketing was the application of a second coat of Portland cement mortar (in the stairwell area) upon which quarry tile was to be installed. The Plasterers had applied a scratch coat of plaster (agreed to be Plasterers' work). Then the disputed second coat (called the "brown coat" by the Plasterers or the "float coat" or "setting bed" by the Tile Setters) was applied by the Tile Setters. Both unions claim this latter coat as their own work.

#### CASE No. 23-CD-137

Martini has a contract with the Rainbo Baking Company in Houston, Texas, to furnish labor and materials for the installation of ceramic tile. Martini delivered its materials

to the jobsite on or about March 14, 1967, and began work the next day. Martini has a collective-bargaining agreement with the Tile Setters and assigned the work in dispute to employees represented by the Tile Setters.

On the morning of March 17, 1967, the Plasterers established a picket line at the jobsite. The picket sign read as follows: "Plasterers Local No. 79, protests substandard conditions Martini Tile Co., Inc., Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or a concerted refusal to work." Shortly after the establishment of the picket, officials of Rainbo requested Martini to remove its employees from the premises. Martini complied. The Plasterers removed the picket and picketing was not resumed although Martini subsequently returned and completed the job.

The work in dispute is the application of a coat of Portland cement mortar applied directly to metal lathe which was laid over painted brick. The Plasterers contends that this is the "brown coat", which is plasterers' work, while the Tile Setters claims that the coat in question is the "float coat" or "setting bed" which is tile setters' work. The dispute at Rainbo was not submitted to the Joint Board for a decision. Martini filed the charge.

#### *C. Contentions of the parties.*

The Plasterers admits seeking and demanding, through its representative, George Longshore, assignment of the work in dispute in Case No. 23-CD-133 at a series of meetings with representatives of the Tile Setters, Texas Tile, and Southwestern, but contends it did not violate Section 8(b)(4)(D), as there were no threats to force a change in the assignment of the work in question, and the picket line was established only to protest Texas Tile's refusal to comply with the Joint Board's decision. In any event, it argues, it is entitled to the work on the basis of the skill,

relative efficiency, and economy and quality of plasterers' work, area practice, the award made by the Joint Board in the instant case, and an agreement made between the Plasterers' and Tile Setters' International Unions. It argues that plasterers have always been entitled to the last coat of motar which is plumbed, rodded, and squared to receive tile. It further contends that the recent introduction of dry set mortars has eliminated the tile setters' traditional setting bed in the one coat and thin set methods, and that the last mortar coat before the application of the tile under these new methods can be called the setting bed only if tile is applied while the coat is plastic or wet; a coat of mortar that is allowed to dry is work properly assigned to plasterers. If the tile is to be applied while this last coat of motar is still wet or plastic, it does not claim the application of that coat, in the interest of efficiency and economy, since it is serving as a combined conventional setting bed and plumb coat.

The Tile Setters contends<sup>2</sup> that it is entitled to the work in dispute on the basis of the skill, relative efficiency, and economy and quality of tile setters' work; the employer, area, and industry practice; and its contracts with Texas Tile and Martini which explicitly assign the designated work to it. It argues further that it is always entitled to the work of applying the last coat of mortar, which is plumbed, rodded, and squared to receive tile, whether or not that coat is allowed to dry before tile is applied. The Tile Setters admits that it is bound by Joint Board procedures, but contends that the Joint Board award of November 10, 1966, in effect awards the work to it, not to the Plasterers. It points out that the award states that the Plasterers is entitled to the work in dispute on the basis of the original (1917) Green Book agreement between the parties, and that that agreement dealt with the conventional or three coat method of plastering and assigned

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<sup>2</sup> Texas Tile and Martini join in the Tile Setters' contentions.

plasterers the work of preparing ceilings and walls for the Tile Setters setting bed. It urges that the advent of dry set mortars and new construction techniques has eliminated work formerly within the jurisdiction of plasterers under the conventional method, and when either the one coat (or float coat) method or the thin set method are employed, the last coat applied is the "setting bed", which even the Joint Board recognizes is the tile setters' work.

#### *4. Applicability of the Statute*

The charges herein allege violations of Section 8(b)(4)(D) of the Act. The record shows, and the Plasterers does not deny, that between August 1966 and January 24, 1967, its representative, George Longshore, sought and demanded from Southwestern and Texas Tile the assignment of plasterers rather than tile setters to the work in dispute in Case No. 27-CD-133, and that on January 24, 1967, a picket was established at the jobsite which caused a work stoppage by all crafts. In Case No. 23-CD-137, the Plasterers concedes, and the record shows, that it established a picket at Rainbo Baking Company, and urged Martini to assign the application of the coat of Portland cement mortar in dispute to plasterers rather than tile setters, and that a temporary work stoppage occurred as a result of the posting of the picket.

We find there is reasonable cause to believe that violations of Section 8(b)(4)(D) have occurred, and that the dispute is properly before the Board for determination under Section 10(k) of the Act.<sup>3</sup>

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<sup>3</sup> The Plasterers contends that, as the parties had agreed upon a voluntary method of adjustment of the dispute, the notice of hearing should be quashed. It argues that Section 10(k) requires only that the unions or groups of employees claiming disputed work agree upon a method of adjustment. We find this contention without merit. The Board has consistently held that the employer who assigned the disputed work must be a party to an agreement that purports to settle an existing jurisdictional dispute. *Local 450, International Union of Operating Engineers (Painting and Decorating Contractors of America, Houston Chapter etc.)*, 119 NLRB 1725; *United Brotherhood of Carpenters and Joiners of America, Local 1622 (O.E. Karst)*, 139 NLRB 591.

### *5. The merits of the dispute.*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to all relevant factors. The following factors are asserted in support of the claims of the parties herein:

#### *A. Collective-bargaining agreements.*

Texas Tile and Martini have delegated their bargaining authority to the Tile Contractors Association of America, Inc., and to the Tile, Marble and Terrazzo Contractors of Houston, Texas. The Tile Contractors Association of America, Inc. has a collective-bargaining agreement with the Tile Layers International Union which specifically covers work of the type in dispute. The agreement in pertinent part defines tile layers work covered as: "The application of a coat or coats of mortar, prepared to proper tolerance to receive tile on floors, walls and ceiling regardless of whether the mortar coat is wet or dry at the time the tile is applied to it." Texas Tile and Martini, as members of the Tile, Marble, and Terrazzo Contractors of Houston, Texas, are also parties to a collective-bargaining agreement pertaining to local conditions with Tile Setters Union No. 20 which incorporates the above-quoted work coverage provision. Neither Texas Tile nor Martini has any contract with the Plasterers. Texas Tile does not employ plasterers. A representative of Martini testified that on occasion in the past it has hired plasterers to perform work of the type in dispute, but never without direct supervision of a tile setter. There have been no Board certifications bearing on the work in dispute.

#### *B. Employer, area, and industry practice.*

The record establishes that, with rare exception, Texas Tile and Martini use tile setters to perform the disputed work. Substantial testimony was offered into the record by both the Plasterers and Tile Setters setting out specific



construction projects in the area on which their respective crafts performed the work in dispute. Evidence as to industry practice was inconclusive. Though area practice by weight of numbers favors the claim of the Plasterers, in our view this factor is outweighed by other factors favoring the claim of the Tile Setters. Thus, the assignments here of the disputed work to tile setters accords with the practice of the Employers, and is not inconsistent with area or industry practice.

*C. Relative skills and efficiency of operation.*

The Tile Setters contends that tile setters are more skilled and more efficient than plasterers in applying a backup coat which is plumbed, rodded, and squared to receive tile, because only a tile setter knows exactly how to prepare a wall to the closest possible tolerance to receive tile. It also contends, as do Texas Tile and Martini, that it is more efficient, especially where only one coat of mortar is to be applied (as on the Rainbo project), to use the same craft for both the mortar work and the tile laying. The Plasterers contends, however, and the record supports its contention, that plasterers are trained to work to as close tolerance as do tile setters. It contends further that plasterers can work faster because they do plastering full-time rather than part-time, and that it is more economical to use plasterers.

The Board is satisfied from the entire record that neither craft can claim superior skill with regard to the application of the mortar bed. Although it appears to be a necessity to use the same craft for both the last mortar coat and the tile laying if the tile is to be set while the last coat is wet, it further appears that where the last coat is allowed to dry before the application of the tile, as was the situation in both cases here, using one craft or two is equally efficient.

Texas Tile's and Martini's assignments, therefore, were not inconsistent with either the relative skills involved, or with efficiency of operation.

#### *D. Other agreements.*

On August 22, 1917, the Plasterers and the Tile Setters entered into an agreement pertaining to the preparing or plastering of walls and ceilings which are to receive tile in the conventional or three coat method. This agreement provided that "... plasterers ... shall prepare or plaster all walls which are to receive tile. They shall plumb, rod and square all walls and scratch same so as to guarantee adhesion of the final coat which shall be put on by the Tilelayer to act as a bed for his tile." A 1924 award entered in evidence spelled out the division of work in substantially the same terms.

#### *E. Action of the Joint Board.*

Both the Plasterers and the Tile Setters agree that they are bound by the Joint Board. The Plasterers urges that in Case No. 23-CD-133 the Joint Board awarded the work to them in its decision of November 10, 1966, and its clarification of March 15, 1967. The Tile Setters argues, as seen hereinabove, that the award favored tile setters and not plasterers. Inasmuch as Texas Tile had not agreed to be bound by any decision of the Joint Board, the decision by that body with respect to the M. D. Anderson project is merely one of the factors which we must consider in assigning the disputed work.<sup>4</sup> In Case No. 23-CD-137, there was no Joint Board award.

In view of all the circumstances, including its ambiguous nature, and upon the entire record, the Board is

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<sup>4</sup> Local 964, *United Brotherhood of Carpenters and Joiners of America, AFL-CIO Carleton Brothers Company*, 141 NLRB 1138; *United Brotherhood of Carpenters and Joiners of America, Local No. 515 (J. O. Veteto & Son)*, 148 NLRB 351.

of the opinion that the Joint Board award above-mentioned should not be accorded controlling weight.

*F. Conclusions as to the merits of the dispute.*

As the Board stated in the *J. A. Jones* case,<sup>5</sup> it will, in conformity with the Supreme Court's *CBS*<sup>6</sup> decision, determine in each case presented for resolution under Section 10(k) of the Act, the appropriate assignment of disputed work only after taking into account and balancing all relevant factors.

Having considered all pertinent factors, we conclude that employees represented by the Tile Setters are entitled to perform the work in dispute. Tile setters are at least as skilled in the performance of the work as plasterers, and both Texas Tile and Martini, which assigned them to the work, have been satisfied with both the quality of their work and the cost of employing them. Moreover, the instant assignments of the disputed work to tile setters are consistent with the explicit provisions of the collective-bargaining agreement between the Tile Setters and Texas Tile and Martini, are consistent with the past practice of the Employers, and are not inconsistent with area or industry practice. We conclude that the Employer's assignment of the work to the tile setters should not be disturbed. We shall, accordingly, determine the existing jurisdictional dispute by deciding that tile setters, rather than plasterers, are entitled to the work in dispute. In making this determination, we are assigning the disputed work to the employees of Texas Tile and Martini, who are represented by the Tile Setters, but not to that Union or its members.

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<sup>5</sup> *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402, 1410-11.

<sup>6</sup> *N.L.R.B. v. Radio & Television Broadcast Engineers Union Local 1212 (Columbia Broadcasting System)*, 364 U.S. 573.

*G. Scope of the determination.*

The work which gave rise to the disputes has already been completed. The Tile Setters requests an award which would cover the whole United States or, in the alternative, an order covering the geographic area in which the Employers operate. The record will not support a finding, necessary for the granting of a broad order, that the disputes promise to recur between the parties. Our present determination, therefore, is limited to the particular projects at which this instant dispute arose.

DETERMINATION OF DISPUTES

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following determination of the disputes.

1. Tile layers employed by Texas State Tile and Terrazo, Inc., and Martini Tile and Terrazzo Company, who are represented by Tile, Terrazzo and Marble Setters Local Union No. 20, are entitled to perform the work (at the M. D. Anderson Library, University of Houston, and the Rainbo Baking Company, Houston, Texas, respectively) of applying the one coat or float coat of Portland cement mortar as backup material to receive tile.

2. Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require Texas State Tile and Terrazo, Inc., and/or Martini Tile and Terrazzo Company, to assign the above work to plasterers.

3. Within 10 days from the date of this Decision and Determination of Disputes, Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas, shall notify the Regional

Director for Region 23, in writing, whether it will or will not refrain from forcing or requiring Texas State Tile and Terrazzo, Inc., and/or Martini Tile and Terrazzo Company, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to plasterers rather than tile setters.

Dated, Washington, D. C. August 22, 1967

JOHN H. FANNING,	Member
HOWARD JENKINS, JR.,	Member
SAM ZAGORIA,	Member
NATIONAL LABOR RELATIONS BOARD	

(SEAL)

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STIPULATION OF THE PARTIES REGARDING THE PREPARATION  
OF THE APPENDIX AND THE ORDER AND TIME  
OF FILING BRIEFS

Pursuant to the Rules of this Court, the parties, which herein include all Intervenors, subject to the Court's approval, hereby stipulate and agree as follows:

I. THE APPENDIX

1. The record in this case shall be reduced to an Appendix, to be comprised of the materials each party may designate. The Appendix shall be prepared pursuant to the deferred procedure authorized by Rule 30(c) of the Federal Rules of Appellate Procedure and Rule 9(a) of the General Rules of this Court. Accordingly, the parties shall serve their designations at the time they serve their respective briefs.

2. Petitioner Plasterers' Local Union No. 79 shall designate those portions of the record required to be reproduced by the Rules of this Court (including the Decision and Order of the Board, the Decision and Determination of Disputes, this Stipulation and the Court's

Order thereon), and shall bear the cost of reproducing these materials.

3. Each party will designate such additional materials as it wishes to reproduce, and shall bear the cost of reproducing the material which it designates. The printer selected by the Petitioner shall bill each party directly for the cost of reproducing the material which each designates. Petitioner will be responsible for the physical preparation of the Appendix.

4. The Petitioner shall also be responsible for filing the Appendix with the Court within 30 days after service of Intervenor's briefs. Seven copies shall be filed with the Court, and three copies shall be sent to each party.

## II. BRIEFS

1. The parties agree that pursuant to Rule 30(c) of the Federal Rules of Appellate Procedure, the briefs may initially be filed in typewritten form. Printed copies of all briefs shall be filed and served within 14 days of the filing of the Appendix.

2. Each party shall serve the other parties with three copies of its brief.

3. It is the intention of the Union Intervenor to file a motion in this Court, no later than October 10, 1968, asking that the case be dismissed as moot, and the other parties intend to file responses thereto opposing such motion. The time for filing briefs herein shall be extended to allow the Court to pass upon such motion, and if the motion is denied, the brief for the Petitioner shall be filed and served within 30 days after the Court shall have ruled upon the motion. Respondent National Labor Relations Board shall serve and file its brief within 30 days after the service of the brief of Petitioner. Intervenor shall serve and file their briefs within 20 days after service of the brief of Respondent. Petitioner may serve and file a reply brief within 14 days after service of the brief of Intervenor.

MARCEL MALLET-PREVOST  
Marcel Mallet-Prevost  
Assistant General Counsel  
National Labor Relations Board

Dated at Washington, D. C.  
this 4th day of October, 1968.

DONALD J. CAPUANO  
Donald J. Capuano  
Attorney for Plasterers' Local  
Union No. 79

Dated at Washington, D. C.  
this 8th day of October, 1968.

WAYNE S. BISHOP  
Wayne S. Bishop  
Counsel for Tile Contractors' Association of America, Inc., Texas State Tile & Terrazzo Co., and Martini Tile & Terrazzo Co.

Dated at Washington, D. C.  
this 7th day of October, 1968.

JERRY D. ANKER  
Jerry D. Anker  
Counsel for Bricklayers, Masons and Plasterers International Union of America; International Association of Marble, Slate, and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters' Helpers, and Marble Mosaic and Terrazzo Workers' Helpers; Bricklayers, Masons and Plasterers' International Union of America, Local Union No. 20 of Houston, Texas; and Inter-



national Association of Marble,  
Slate and Stone Polishers, Rubbers  
and Sawyers, Tile and Marble Set-  
ters Helpers and Terrazzo Workers  
Helpers Local Union No. 108 of  
Houston, Texas

Dated at Washington, D. C.  
this 4th day of October, 1968.

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(Filed October 23, 1968)

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1968

No. 22,073

PLASTERERS LOCAL UNION No. 79, OPERATIVE PLASTERERS'  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION,  
AFL-CIO, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

Before: Bazelon, Chief Judge, in Chambers.

**Order**

On consideration of the motion of the National Labor Relations Board for approval of the stipulation of the parties regarding the preparation of the appendix and the order and time of filing briefs, it is

ORDERED that the stipulation is approved with the exception of the portions thereof which vary from the provisions of Rule 30(c) of the Federal Rules of Appellate Procedure or in any way change the dates on which the briefs and appendix to the briefs are due to be filed.

Such variations and extensions of time may not be effected by stipulation. Such requests must be made by motion duly served and filed with the Clerk as prescribed by Rule 27(a) and (d) of the Federal Rules of Appellate Procedure and Rules 6(a)(e) and 8(c) of the General Rules of this Court.

Treating the stipulation as a joint motion for extension of time within which to file the briefs and appendix of the parties, it is

ORDERED that the motion be granted and petitioner's brief shall be filed and served within 30 days after entry of an Order ruling on intervenors' motion to dismiss this case as moot; respondent's brief shall be served and filed within 30 days after service of petitioner's brief; intervenors' briefs shall be served and filed within 20 days after service of respondent's brief; petitioner's reply brief may be served and filed within 14 days after service of intervenors' briefs; the appendix of the parties shall be filed within 30 days after service of intervenors' briefs.

The parties may on the dates due, serve and file a typewritten or page proof copy of their briefs. Printed copies of all briefs shall be filed and served within 14 days from the filing of the appendix of the parties.

[1] BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Twenty-Third Region

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Case No. 23-CD-133

In the Matter of:

PLASTERERS LOCAL UNION No. 79 O. P. & C. M. I. A.  
OF HOUSTON TEXAS

and

SOUTHWESTERN CONSTRUCTION COMPANY

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Case No. 23-CD-137

In the Matter of:

PLASTERERS LOCAL UNION No. 79 O. P. & C. M. I. A.  
OF HOUSTON TEXAS

and

MARTINI TILE AND TERRAZZO COMPANY

7620 Federal Office Building,  
515 Rusk Avenue,  
Houston, Texas,  
Thursday, April 6, 1967.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock, a.m.

BEFORE:

DONALD H. HICKS, Hearing Officer.

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[33] Mr. Capuano: I will propose the stipulation that on February 10th, 1967, Judge Joe Ingraham, United States District Judge, United States District Court for the Southern District of Texas, Houston Division, in Case No. 67H-102, Clifford Potter, Regional Director, et al., versus Plas-

terers Local [34] No. 79, et al., issued a temporary injunction against Plasterers Local 79 as a result of a request by the Regional Director under Section 10(1) of the Act, which was based upon the Charge filed by Southwestern against Plasterers Local 79 in Case No. 23-CD-133.

Hearing Officer: Do you so stipulate, Mr. Carr?

Mr. Carr: I so stipulate, and on the basis of the stipulation, I will withdraw my request for the admission of the documents.

Hearing Officer: O.K. Miss Thacker, do you so stipulate?

Miss Thacker: Yes.

Hearing Officer: The stipulation is received.

[35]

**Floyd Webb**

was called as a witness by and on behalf of Southwestern Construction Company and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

Q. (By Mr. Carr) Mr. Webb, what is your job? A. Superintendent for Southwestern Construction Company.

Q. I take it you are a job superintendent, is that correct? A. Right.

Q. On what job are you now? A. On the M. D. Anderson Library job at the University of Houston.

Q. And how long have you been there? A. Approximately eighteen months, shortly over eighteen [36] months, about twenty-two months.

Q. O.K.

I call your attention to August of last year, August of 1966. Is this approximately the time that the initial tile and terrazzo work was begun at the M. D. Anderson Library? A. That is about right, approximately on that date.

Q. Who was doing this work? A. Texas Tile people did the work.

Q. And this was Texas State Tile and Terrazzo? A. Right.

Q. And they were having members of which craft do the work? A. Well, Texas Tile employees, in other words, the Texas Tile Setters Union—the tile company was furnishing men which were union members.

Q. And these were tile setters? A. Right.

Q. Union members.

Do you know Mr. George Longshore? A. Yes, sir.

Q. What is his title? A. He is business agent for the Plasterers.

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[37] Q. O.K.

Then we will go to January of this year, January of 1967.

Let's back-track. Was there tile and terrazzo work being carried on continuously from August of '66 through January of '67? A. No, sir, they completed, in other words, caught up with the work that could be completed possibly sometime in October, I don't know the exact date, but during October.

Q. O.K.

When did any tile work resume? A. It was in January we received handrails which held up the work and we received our handrails and started possibly the second week in January, thereabouts.

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Q. Describe basically and briefly the structure, beginning with the first thing that would be put up in the construction of this stairwell, and then each additional element as it was added to it. A. The first thing, the lather—

[38] Hearing Officer: Just a minute. Let me interrupt you here a second. Are we going, at this point, into the actual work, itself, or are you still confining your questioning to whether or not there is reasonable cause to believe that there is a violation of 8(b)(4)(D) here?

Mr. Carr: I am unavoidably going to touch very briefly on the type of work involved, with the object of establishing that there was a violation of 8(b)(4)(D). I think that the record will have to, to have any meaning whatsoever to Mr. Webb's testimony, will have to reflect very briefly what the work is.

Hearing Officer: O.K.

Mr. Carr: I do not intend to make this a statement or have him testify as to the merits, but just enough so we can have some understanding of what work is involved.

Hearing Officer: O.K. Fine. Go ahead.

Q. (By Mr. Carr) Now, you were beginning to describe the— A. The lathers installed channels and lath on them, and then the plasterer came in and—

Q. Let's get more basic, if we could, for a second. A. All right.

Mr. Capuano: What area are we talking about?

Mr. Carr: We are talking about in the stairwells.

Mr. Capuano: In the stairwells.

[39] Q. (By Mr. Carr) I would presume the first thing that would go up— A. In other words, establishing the wall, the lather sets up a metal channel or a stud and fastens expanded metal on either side that forms your basic background.

Q. That is what I want you to go into. A. And then the lathers—

Mr. Capuano: I am sorry, could I interrupt you? I didn't catch what he said at first about a stud. A. It's a metal stud that your lather fastens on, in other words, in a wall you have got either wood or some support, center support.

Mr. Capuano: This is the center part of the wall?

The Witness: That's right. And you have an expanded metal lath fastened onto this, and after that is completed, the plasterer puts his scratch on or first coat, and then in this case you have got one more coat that follows, which was the float coat, I believe, is the plasterer's term,

I mean the tile setter's term, which was used as your coat, setting coat or bed coat for the tile. And that makes your wall up there.

Q. (By Mr. Carr) Now, we are talking about—you mentioned two coats, the scratch coat, which was applied by the plasterer at this job. A. Right.

[40] Q. And then the float coat which, I believe, can be generally agreed, if there was a dispute, was the work in dispute. A. Right, that would be the second coat.

Q. Now, on top of that goes, in this case, what? A. The tile would be your next coat.

Q. What type of tile? A. In this we used quarry tile.

Hearing Officer: What kind?

The Witness: Quarry. It's a square tile. It's about six inches.

Hearing Officer: Is that the brand name or is it the type?

The Witness: It's the type of tile. It's normally used in floor or wall construction.

Mr. Carr: Quarry, q-u-a-r-r-y.

Q. (By Mr. Carr) In the construction of these stairwells do you know approximately when the handrails were first installed and by whom? A. The iron workers installed the handrails. It was, I believe, on a Friday, Thursday or Friday, the first sections were put up.

Q. Do you know— A. The 20th of January, I believe.

Q. In the month of January.

[41] If I showed you a calendar would you be able to identify within a few days the Thursday or Friday we are talking about? A. Yes, sir.

Q. All right. A. We started setting the handrails around the 17th or 18th.

Mr. Carr: Let the record reflect that that would be Tuesday or Wednesday.

A. On Tuesday or Wednesday, one. And on Thursday the lather finished putting his metal lath up. And on Friday the plasterer scratched in.

Q. O.K.

So this would be, then, Friday, January 20th, is that correct? A. Right. Right.

Q. This, then, you have testified, that on Friday, January 20th, the plasterers applied what we have previously described as the scratch coat. A. Right.

Q. Was there any work, then, on Saturday or Sunday? A. No work on Saturday or Sunday.

Q. O.K.

Then I direct your attention to Monday, January 23, 1967. Can you tell me in relation to the stairwell if any work [42] was done on that date. A. Yes, sir, the tile setters put their float coat or bed coat on for the tile.

Q. They did no more than that? A. No, sir, that is all.

Q. They let it dry? A. Set overnight, right, sir.

Q. Then I direct your attention to the following day, Tuesday, January 24th. Was any work done in the stairwell on that day? A. No, sir.

Q. Can you give me any reason? A. Well, there was a picket on the job in the morning when we went to work.

Q. Do you know who put the picket out? A. Well, it was by the Plasterers.

Q. Plasterers.

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[45] Q. (By Mr. Carr) Mr. Webb, you have heard the stipulation that has been read to the effect that it was not intended that there be a strike. Was there any work done on the project on Tuesday, the 24th of January?

A. No, sir, there was no work.

Q. No work done.

Was there any work done on the following day, Wednesday, January 25? A. No, sir.

Q. Did you have occasion on that day to talk with George Longshore?

Hearing Officer: First of all was there any work to be done on the job?



The Witness: Yes, there was plenty of work to be done.

Hearing Officer: O.K. Go ahead.

Q. (By Mr. Carr) Did you have occasion on Wednesday, January 25, to talk to George Longshore? A. He was on the job, yes, sir. We were several there this morning. We were trying to work out a deal where we could go back to work.

Q. You mentioned several. Could you tell us any of the other people that were present? A. Jim Ross from our company was there, Mr. Bruggerman, I believe, Biggerman, Bruggerman, from the Plasterers, Tobin & Rooney Plaster Company was there, and Mr. Zambon from [46] Texas Terrazzo, Tile & Terrazzo Company, was there. And I believe two of his workmen were present at the time.

Q. Was there anybody there from the Tile Setters Union?

A. Yes, sir, the business agent, Mr. McHargue.

Q. Mr. McHargue? A. Mr. McHargue was there, right. I get my names mixed up.

Q. Would you describe this meeting? A. Mr. Ross called this to get together to see if we could work together to see when we could go back to work.

Mr. Capuano: I am going to object to why Mr. Ross called this meeting. I think he can tell us what was said.

Hearing Officer: Sustained. Go ahead.

A. Well, this group of men collected at the job this morning, on that particular morning, to try to work out an agreement where we could go back to work there, and we more or less discussed the work that was to be did there, the work involved, and we had some of the tile there, showing the space it had to be in, where the third coat, and so forth, wouldn't work, in other words, it had to be scratch—

Mr. Capuano: I can't hear you, sir.

A. A scratch coat and one extra coat or float coat was all that you could get on behind the handrail. In other words, you had such a small space there there wasn't

no other way to put another coat on, in other words, to level up. And that was discussed around there, and each one stated what was [47] involved there. In other words, the Plasterers was claiming the putting of this coat on next to the tile, and the Tile Setters were using that as their level coat or finish coat to bed their tile to.

Q. (By Mr. Carr) Did Mr. Longshore—you said that he did claim that the second coat directly beneath, in this case because of the tolerance with the handrail would be the coat directly beneath the tile, was to be applied by the plasterers, is that correct? A. Right.

Mr. Capuano: I am going to object to that. I didn't hear him say that. And I think the question, you know, is quite leading, did Mr. Longshore claim—

Hearing Officer: Yes, it is leading.

Mr. Carr: I think it was merely a recitation, a summary of the statements that he had just made.

Mr. Capuano: Well, that is what I thought you were doing, but I don't recall him saying that Mr. Longshore made the statement that you made.

Hearing Officer: It's very difficult for me to understand Mr. Webb, and I am not so sure that he said it in that manner. Maybe we better ask Mr. Webb again to speak more slowly and distinctly and tell us again what did happen in that meeting.

The Witness: O.K. We had a scratch coat on the wall [48] ready, in other words, for the bed coat or second coat, and then the next coat, the finish coat, would be your tile, in other words, that would bring you out to your finished wall. In this particular case the tolerance between your handrail and your rough wall or your metal lath wasn't sufficient to get three coats on. In other words, some areas there was barely room to get your tile on plus about five-eighths of an inch. And so this was the plasterer's, Mr. Longshore claimed, in other words, he already had the scratch coat on, that this next coat or bed coat was their work, too, and if the tile setter put

it on he had to cover it with tile the same day that he put his bed coat or float coat on. If it was did the same day the tile setter could do it but if he waited until the next day it was the plasterer's.

Hearing Officer: O.K. Mr. Carr?

Q. (By Mr. Carr) Was there any discussion as to the possibility of putting the tile on the same day? A. It was discussed, right. The tile setter claimed that if he put it on the same day it would be too wet for your quarry tile to bond to it. Quarry tile is a heavy tile and it has to be tapped on and would break your bond, your other coat wouldn't be set sufficient, wouldn't be sufficiently bonded to your scratch coat, and therefore it wouldn't be practical to put it on the same day.

[49] Hearing Officer: At the time of this meeting had the second coat already been applied?

The Witness: In this one little area it had.

Hearing Officer: In one area?

The Witness: Right.

Mr. Carr: I think I have no further questions.

Hearing Officer: O.K. Miss Thacker, do you have any questions?

#### Cross Examination

Q. (By Miss Thacker) Mr. Webb, you were present at this meeting that you described that took place on the, let's see, the 25th. Who requested this meeting? A. Mr. Ross, I believe, contacted—

Q. Mr. Ross requested it? A. Yes, Ma'am.

Q. And he requested that Mr. Longshore be there, and Mr. McHargue? A. Right.

Q. What was Mr. Longshore's request at that time? A. Well, that they go ahead and put this second coat on.

Q. Why? Why did he want that? What reason did he give? A. Well, he claimed that, as I recall it, a brown coat, in other words, a second coat, which was the plasterer's.

Q. And what kind of tile was to be set there in that area? [50] A. It was the same, quarry tile.

Q. Is that a light or a heavy weight tile? A. It's a heavy tile.

Q. You have been in the construction business a number of years? A. Right.

Q. Can you set quarry tile on a wet bed?

Mr. Capuano: I am going to object. I think we are getting away from what Mr. Longshore did. Why he did it, I think, would perhaps go to the merits of the dispute.

Hearing Officer: I think so, too.

Miss Thacker: Well, this has to do with the relevancy of the dispute and the claim that Mr. Longshore made at the time, and it has to do with the reason ultimately of Mr. Longshore putting on the picket.

Mr. Capuano: The picket, as I understand it, was on two days before this meeting.

Hearing Officer: Well, go ahead and develop it further, then. We will see where we go.

Q. (By Miss Thacker) Do you remember the question, Mr. Webb? A. No.

Hearing Officer: State it again.

Q. (By Miss Thacker) You say that the setter had put on his float coat? [51] A. Right.

Q. It was wet. The specifications called for quarry tile? A. Right.

Q. Can that be put on a wet setting bed? A. According to the tile men that installed it, it's not practical to. In other words, if the float coat hasn't dried enough to bond in, in other words, if you tap it or move it in any way, which would move in this case—in other words, if it was on a solid wall, it probably wouldn't, but on a lath, metal lath wall, there is some flexibility to it, and this quarry tile has to be tapped on, in other words, to line up, and that would break your bond between your float coat and your scratch coat, and it would cause it to fall off the wall.

Q. Did they discuss the application of a third coat? A. It was discussed.

Q. And what was pointed out? A. That it wasn't room enough for a third coat to be practical to put on, in other words, some areas you wouldn't have any, at all, there would be less room for it.

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[55] Q. (By Mr. Capuano) Mr. Webb, do you know what type of contract Southwest had with Texas State Ceramic Tile Company? A. They were sub-contractors to install tile and terrazzo on the job.

\* \* \* \* \*

[56] A. No, sir, I do not.

Q. You don't know? A. No, sir.

Q. O.K.

Do you know whether it is a practice of Southwest to include Joint Board clauses in their sub-contracts? A. No, sir, I do not.

Q. You will have to talk up. A. No, sir, I do not.

Q. You do not know? A. No, sir.

Q. Now, you say Texas State, I will refer to them as Texas State, and I am talking about the Tile company. A. All right.

Q. They had the contract to do the tile work on the job? A. Yes, sir.

Q. Was there terrazzo work to be done, too, on the job? A. We had some terrazzo tread in the stairs only.

Q. I see. That was precast terrazzo? A. Precast terrazzo.

Q. Now, what tile work did they have in their contract? A. Ceramic tile in the rest rooms and the stairwells and floors in the rest rooms and stairs.

Q. All right.

So there was ceramic tile in the rest rooms in addition [57] to this quarry tile you talked about? A. Right.

Q. Now, I believe you indicated that some tile was caught up or the tile company was caught up in October

'66 and then came back again in January to continue. A. Right.

Q. Now, what tile was caught up in October '66? A. All of the ceramic tile was completed at that time and the largest part of the quarry tile was completed at that time.

Q. The largest part of the quarry tile, too? A. Yes, sir.

Q. That is in the stairwells? A. Right.

Q. On the floors or walls, or where? A. On the walls.

Q. Was there quarry tile on the floors, too? A. Right.

Q. How many floors is this building? A. Eight stories and a basement.

Q. Eight stories and a basement.

How many rest rooms on each floor? A. There's two on all floors except one, and there is one on that floor.

Q. How many stairwells? [58] A. Four stairwells.

Q. Four stairwells?

\* \* \* \* \*

Q. Now, you described for us how the stairwells, the tile was put on the stairwells. Could you tell me how it was put on in those bathrooms? What was the innermost part of the wall first? A. You have got the same plaster, you have got your studs.

Q. Steel studs? A. Steel studs, with metal lath on all walls except one. You have got one wall was fastened on masonry.

Q. Was that the outside wall? A. Outside wall, exterior.

Q. Was that concrete block? A. Concrete.

Q. Just concrete? A. Concrete wall.

Q. All right.

You put metal lath on the studding and on the masonry, right? A. Right.

\* \* \* \* \*

[60] A. Well, they put it with a cement mastic that they mix up and put on the back of it and put it on it.

Q. Do you know the name of that mastic they used? A. No, I do not. I am not involved in that. It's mixed with the cement.

Q. This mastic was mixed with the cement.

Now, you talked about these handrails being put in by the iron workers on the 17th, on Tuesday, and then on Thursday the lath was put on. You are talking about the lath in the stairwells? A. Right.

Q. Now, was there concrete walls in some of the walls of the stairwells, too? A. Yes, the exterior wall, you would have one wall, right.

Q. Would be concrete and then the others would be steel studding with metal lath? A. No, most of your stairs, your exterior walls are masonry and your interior walls was metal lath with studs with the lath on them.

\* \* \* \* \*

[66] Q. Now, do you recall at this meeting on the 25th any comments being made by anyone to Mr. Longshore that he could fill in the voids in these walls in the stairwells, in other words, if the wall, after the mortar was put on by the tile setter, wasn't plumb, that he could— A. The walls were already completed at that time.

Q. No mention made of that? A. There was no work on the walls at that time.

Q. O.K.

Now, you said that the tile setter claimed he could not put the quarry tile on the wall the same day that the mortar was put on, is that right? A. And get a good job of it, no, sir.

Q. This is what the tile setter said? A. Right.

Q. And this is what you were going by, what he said? A. Well, I figured him as a qualified expert, I mean, in [67] that line of work.

Q. Right. So you were paying attention to what he said. A. I was taking his judgment as being correct.

Q. O.K.

Now, you say there wasn't room enough for a third coat. A. No, sir, that's right.

Q. What did you mean by that, the thickness of the wall would be too great to put a third coat on? A. Well, you



would have to see the wall to understand the situation. I mean, on the next job it might not be that way, but this particular place where your handrails went on, it was a metal piece installed inside the wall that you anchored to, which taken up possibly a half, three-eighths to a half inch of your wall space, and the tile and everything had to work over that, your lath.

Q. You had to anchor your handrail into what? A. Into the steel framing in your wall.

Q. To the steel framing, right? A. Right. You couldn't just anchor it to the plaster. You had to have a support in there. And this support taken a part of the wall where the plaster normally would have went or your back-up would have went.

Q. You mean that support would only be maybe a half an inch long so you couldn't go out two inches on the wall, is that what you are saying? [68] A. We only had an inch and a half, approximately, to start with.

Q. Right. A. Finish, that is, from your rough metal lath to your finished product.

Q. An inch and a half? A. Something like that, at the best. By the time you get your metal lath, scratch coat, and then if you protruded out another three-eighths of an inch with a piece of metal, you would have scant room to get a five-eighths space there left, and your tile is approximately a half-inch thick so you can see you only had—

Q. Was there any space there in the stairwells where you used more than an inch of mortar or an inch and a half of mortar? A. There's some places, yes, sir.

Q. Up to two inches? A. No, there's no place you had two inches. You only had an inch and a half to start with.

Q. Even on the masonry walls, is that right? A. Well, I wouldn't say there wasn't holes in there where you had that much depth. Usually rough concrete has three holes.

\* \* \* \* \*

## [74] Recross Examination

Q. (By Miss Thacker) Mr. Webb, was there a work stoppage, a complete work stoppage, after the picket was placed? A. That's right.

Q. Was there still a work stoppage, a complete work stoppage, after the location of the picket was moved? A. That's right.

Q. And that continued until the time of the injunction? A. Well, it was a few of the crafts went back on to work but the majority of them was off until the injunction.

Q. Can you state to your knowledge that Texas State Tile & Terrazzo did give the work assignment and it was being carried out to the tile setters, members of Local 20? A. That's right.

Q. And can you state that demand was made in your presence or you were aware of a demand being made by Mr. Longshore that that work assignment be given to the plasterers? A. Right.

Hearing Officer: What work assignment?

Miss Thacker: According to the contract between Texas [75] State and Southwestern.

Hearing Officer: From your information that you know, what work assignment was Mr. Longshore asking for?

The Witness: He was asking for the brown coat or second coat of plaster on the rest rooms and stairs.

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[76] Q. And you knew what work Mr. Longshore was claiming, what work was in dispute, didn't you? Didn't you just tell the Hearing Officer what work Mr. Longshore was claiming? A. Right, in other words, he was claiming the second coat or brown coat of plaster there.

Q. Or the first coat on concrete block or masonry, right? A. Right.

Q. And the Joint Board award other than giving the wrong building name gave that work to Mr. Longshore, didn't it, and the Plasterers? A. Well, it depends on

whether you was a plasterer or whether you was a tile setter.

Q. I am saying that, I think you understood what I said, I said that the Joint Board in that decision you saw gave the work to the Plasterers, didn't it? A. Right, but the Tile Setters had already informed them that they wouldn't abide by the decision before it was ever rendered.

Q. The Tile Setters said they wouldn't abide by the decision before it was rendered? A. That they wasn't a member, no.

Q. All right.

But you did understand what work the Joint Board gave to the Plasterers, didn't you? A. Not in that particular building. Our building wasn't [77] mentioned on it. I mean, what dispute they had in some other building, that had no bearing on the case there.

Q. O.K.

When Mr. Carr asked you the question I believe he phrased it assuming that the Joint Board had said the Anderson Library, right, isn't that the way he phrased his question to you? A. Something like that.

Q. All right.

So we were assuming we were talking about the Anderson Library in the Joint Board award, weren't we? A. I guess that's right.

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[80]

**James K. Ross**

[81] was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

#### Direct Examination

Q. (By Miss Thacker) What is your position and what company are you with, Mr. Ross, please? A. Vice President Southwestern Construction Company.

Q. Who has the sub-contract on the Anderson Library building at the University of Houston for the tile work?

A. Texas State Tile & Terrazzo.

Q. Are you aware of what work assignment they made, to what craft they made the work assignment? A. Yes, I am aware.

Q. Who was it? A. To the Tile Setters.

Q. Were there any requests or demands made to you or to any of your employees by the business agent, Mr. Longshore, of the Plasterers for that work assignment?

A. For part of the work the Tile Setters were doing. There was none made directly to me. I had heard from the job that there was, in late summer, a question about part of the setting.

Q. Was a picket established by the Plasterers? [82] A. There was a picket put on the job by the Plasterers, yes.

Q. What was the date? A. To the best of my knowledge it was in the morning of January 24, this year.

Q. Did you request a meeting with Mr. Longshore and the Business Agent of the Tile Setters and other interested parties as a result of this? A. I did. I think the following day, in the morning, I tried to get all the parties who were interested together to see if they could meet on the job and establish specifically what the questions were and try to resolve them.

Q. At that meeting did Mr. Longshore make his position clear to you as what his request was? A. I think reasonably so, yes.

Q. What was it, please? A. I might say that all the work that the tile contractor had to perform was, at that time, completed except for the balustrades and the stair treads, rises and landings, had been completed, and that the question remained at that time who should put the coat of plaster directly over the scratch coat on the balustrades of the stairwells.

Q. And he specifically asked that this work be assigned to the Plasterers? A. Yes, to my knowledge he demanded it.

[83] Q. Was there a work stoppage as a result of the picket? A. Unquestionably.

\* \* \* \* \*

[88] So even though this decision refers to the science building you knew that was a mistake and it was referring actually to the library building, didn't you? A. I would—I could assume that.

\* \* \* \* \*

[90] Q. And what type of contract did you have with Texas Tile? A. We had a lump sum contract for a prescribed amount, a defined work area of work.

Q. And did that— A. Which did include, which was based on the way the [91] specifications and plans were written.

Q. Did it have any provision in there for binding Texas Tile to the Joint Board? A. It did not.

Q. There was no provision saying that Texas Tile was bound by all the terms of the general contractor's agreement with the owner or anything like that? A. No.

\* \* \* \* \*

[92] Q. So as far as you know there was nothing in your own contract with Texas Tile binding them to the Texas Board? A. I know there was nothing—

Q. I can't hear you, sir. A. I know there was nothing in my contract, and I haven't found anything in my contract with the owner that would require it.

Q. Have you checked the general conditions to see if there was anything on settlement of jurisdictional disputes? A. Yes.

Q. And there was nothing in there either? A. I can't find it.

Q. O.K.

Now, you say that Longshore was asking for the coat of mortar on the balustrades, I believe is the way you put it. A. At the time I met him the only work remaining,

as I told you, was, that the tile setter had to do, was the quarry tile on the balustrades.

Q. What are you talking about, balustrades, now? A. That's the center rail on the stair.

Q. Yes, I know that. Balustrades are usually small—  
A. Well, the dividing, this was a solid—

[93] Q. You are talking about a partition, aren't you?  
A. Small partition.

Q. Right. A. Handrail at the center of a stairwell.

Q. Right.

That was about four or five inches wide, was it? A. Well, I don't remember how wide.

Q. Yes.

They weren't individual posts that we were claiming?  
A. No, it was a solid, low wall.

Q. Right, solid, low wall. And what were the plasterers or what did you understand Mr. Longshore was claiming, then? A. An additional coat of plaster over the scratch coat.

Q. All right.

Now, this is what the Plasterers were claiming all along, wasn't it, the second coat of mortar on the scratch or the first on the block? A. I presume that is what they were, this was my first contact with him directly, and I presume that that is what he had a question about, yes.

Q. You hadn't heard from anybody else prior to that?  
A. I had heard from our superintendent that there had been a discussion on the job prior to that time.

Q. And that was Mr. Longshore's claim, then? A. I didn't hear it directly from Mr. Longshore, but I think [94] that is where it came from, yes.

\* \* \* \* \*

[97] Q. You knew it applied to that job, didn't you? A. Probably so.

Q. Did Mr. Zambon tell you he even wrote to the Joint Board and told them they made a mistake in— A. I think he did, yes.

Q. So to finish my question, told the Joint Board that they had the wrong job listed on their decision, and your answer to that was yes, he did? A. Well, they didn't change it.

Q. Pardon me? A. They didn't change it even March 15, as I recall.

Q. That's right, they didn't change it, but he told you that he wrote this telegram or letter? A. I believe he did. I did not send them anything on it.

\* \* \* \* \*

[101]

**G. Zambon**

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

Hearing Officer: Give the reporter your name and address, please.

The Witness: My name is G. Zambon, and I am President of the Texas State Tile & Terrazzo, Incorporated, of Houston, Texas.

\* \* \* \* \*

[102] Direct Examination

Q. (By Miss Thacker) Mr. Zambon, were you the subcontractor on the library building at the University of Houston on which Southwestern Construction was the general contractor? A. Yes.

Q. What work assignment did you make in this particular contract? A. Assignment to—

Q. The craft, what craft did you give the work assignment to in this particular work? A. To the Tile Setters, Local No. 20.

\* \* \* \* \*

[103] Q. (By Miss Thacker) Was there a picket established on the job? A. Yes.

Q. And did all work stop as a result thereof? A. Right.

\* \* \* \* \*



## Cross Examination

[107] Q. O.K.

Now, you realize some time between the date of that telegram and sometime in January, anyway, that the dispute was really over the Anderson Library, didn't you, not a science building? A. Well, I presumed that is what it was, that is true. [108] I presumed it was over the M. D. Anderson Library.

Q. Right. And it was just a mistake on the Joint Board's part calling it the science building, or a mistake on somebody's part. A. That is what I presumed, yes, sir.

Q. Right. And in fact, in January you sent the Joint Board another telegram correcting it for them— A. Correct.

Q. —so that it would say Anderson Library, right? A. Correct.

[110] Redirect Examination

Q. (By Miss Thacker) Mr. Zambon, you have stated for the record that you are not bound by any decisions by the National Joint Board. A. Correct.

Q. You belong to the local chapter of Tile Contractors? A. Yes.

Q. Do they bind themselves to the decisions of the National Joint Board? A. No.

Q. You are a member of the National Contractors Association? A. Yes.

Q. Do they bind themselves to any decisions of the National [111] Joint Board? A. No.

[112]

Tom Zambon

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

[113] Direct Examination

Q. (By Miss Thacker) Mr. Zambon, what is your position with Texas State Tile & Terrazzo? A. Tile setter.

Q. You were foreman on the library job at the University of Houston? A. Yeah.

Q. Did Mr. Longshore, Business Agent of the Plasterers Local Union 79, ever approach you in connection with the work there? A. Sure, quite a few times.

Q. To whom had you made the work assignment? A. To the Tile Setters.

Q. To the Tile Setters, Local Union 20? A. To No. 20, yes.

Q. And Mr. Longshore asked you for the work, that it be assigned to his plasterers? A. Yeah.

\* \* \* \* \*

[118] Q. All right.

Now you are talking about over metal lath right where you put— A. Over metal lath, that's right.

Q. Right. And on the block there wasn't a scratch coat, just a coat of your mud. A. The block was the same thing, the stairwells over there, they were on mesh.

Q. Wait a minute, now. We are talking about the bathrooms. A. Well, you talked about the stairwells a while ago.

Q. No, I talked about the bathrooms. A. Well, the bathrooms I use the same principle.

Q. Yes, I realize that, but on the lath you had the scratch coat put on by the plasterers? A. That's right.

Q. And the coat you put on and then you put your tile on. A. That's right.

Q. And the concrete block, the wall that was the exterior wall, concrete wall, you put on just a coat of mud for the tile setters. A. Right, one coat.

Q. One coat, and the tile setters put that on? A. That's right.

Q. Now, how did you put your tile on? [119] A. With cement.

Q. What kind of cement? A. Cement that get a good bonding on my tile.

Q. You put that on the next day, though. A. The next day, yes.

Q. Did you wet your tile? A. Huh? They don't have to be wet.

Q. What did you use— A. Not the quarry tile. Quarry tile don't have to be wet.

Q. I am talking about the bathrooms. I haven't asked you about the stairwells. A. Well, you went back over on the stairwells on the exterior walls.

Q. I didn't say anything about the stairwells. You have an exterior wall in the bathrooms, too, don't you? A. Yeah.

Q. Well, that is what I was talking about. Now, what did you put in the cement that you used the next day? A. I used some compound there to slow my cement, that is all. I have been doing it for forty years.

Q. You have been using that compound for forty years? A. That's right.

Q. What kind of compound was it? A. Well, it's concentrate.

Q. What is the name of it? [120] A. Concentrate. That is what is the name of it.

Q. Has it got a commercial name to it? A. They have got a lot of different names.

Q. What kind were you using? A. Concentrate.

Q. That is the name of it, just concentrate? A. That's right.

Q. No brand name to it? A. No.

Q. No brand name on it? A. I don't know. What brand name it got? They have got concentrate on it. What is the difference, anyway?

\* \* \* \* \*

[122] Hearing Officer: On the record.

In an off-the-record discussion it's my understanding that where you have a concrete wall a coat of mortar or plaster, whatever you want to call it, is attached to the concrete wall. This is called a brown coat by the Plasterers [123] and a float coat by the Tile Setters. Now, is this work that the plasterers are claiming as their work?

Mr. Capuano: Yes.

Hearing Officer: And Miss Thacker, is this work that the Tile Setters are claiming as their work?

Miss Thacker: Yes.

Hearing Officer: Now, in a situation where you have metal lath, a coat of plaster or scratch coat, which this is called, I believe, is attached to the metal lath. Now, to my understanding there is no dispute that this is Plasterers' work, but then another coat may be applied to this scratch coat, and this is called a brown coat by the Plasterers and a float coat by the Tile Setters. Now, this brown coat or flat coat, as it's called by the Tile Setters, do you claim this as your work, Mr. Capuano?

Mr. Capuano: Yes, we do except that I think we have to go one step further. I don't think we covered that in the off-the-record discussion. We claim it if the tile is not set on that brown coat the same day.

Hearing Officer: I see.

Mr. Capuano: In other words, if they can set their tile the same day in that brown coat, we also call it the plumb coat, then we would not claim it or, as I said earlier, we claim it but we do not raise any dispute about it.

But if the tile is not going to be set in the brown coat [124] while it's still plastic or wet, in other words, you are going to come back the next day and set the tile, then we claim that brown or plumb coat, yes, sir.

Hearing Officer: I see.

Miss Thacker: It is our contention that it is irrespective of whether that coat is wet or dry, that it belongs to us, and that that is the decision of the tile contractor to make as to when he wants to apply his tile.

Hearing Officer: O.K. Well, we won't get into that.

Miss Thacker: No.

Hearing Officer: It's just the fact that you are claiming this work that we talked about.

Miss Thacker: Yes.

Mr. Capuano: Excuse me. That would also apply even when there is one coat on concrete walls or masonry, too. In other words, if they can apply their tile while it's wet, we would not raise any question about it either, and to clarify it a little further, when we said concrete walls that is what we had here, but we are talking about any sort of masonry, concrete block, clay tile, brick, even, if you have brick. In other words, any hard masonry surface.

Hearing Officer: I see. And so maybe the record will be clear, we talked about the conventional method that is used. So would somebody please describe that?

Mr. Capuano: Yes.

[125] In taking the same situation, metal lath over studding, you know what the studs are, the two by fours running up and down, or steel studs, you would have a scratch coat on the metal lath to stiffen it, one coat.

The second coat would be a plumb coat or brown coat, which would be put on to plumb and square the room, plumb the wall, make it straight.

Those two, I believe will be agreed, are Plasterers' work.

The third coat will be put on by the Tile Setters and he beds his tile in that. That is his setting bed. That would be the conventional method.

Miss Thacker: There is one qualification on that, which I presume was just an omission, that your final coat is scratched.

Mr. Capuano: Our final coat is scratched?

Miss Thacker: Yes.

Mr. Capuano: You are talking about the plumb coat?

Miss Thacker: In any application that you make.

Mr. Capuano: If the tile setter wants it scratched we scratch it, that's right.

Miss Thacker: Your final coat is scratched, according to the agreement.

Mr. Capuano: If it's supposed to be scratched, yes.

Miss Thacker: The agreement says it's to be scratched.

[126] Mr. Capuano: Well, the decision doesn't say it has to be scratched.

Miss Thacker: The 1917 says it has to be scratched.

Mr. Capuano: Look at the 1924 decision.

Miss Thacker: It says scratched.

Mr. Capuano: No, it doesn't.

\* \* \* \* \*

[127] Mr. Power: Mr. Hearing Officer, if we may, we certainly have no objections to using the words that we have to scratch the plumb coat.

Miss Thacker: All right.

Mr. Power: But being practical, being in the business, myself, many times a tile setter will say don't scratch it. It's in the agreement to be scratched for his setting bed, but many times they will tell you not to scratch it.

\* \* \* \* \*

[128] **George Longshore**

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

[129] **Direct Examination**

\* \* \* \* \*

Q. Did you learn that tile setters were performing work that you as a plasterer considered to be within your jurisdiction? A. Yes, sir.

Q. When did you learn that, approximately? A. Oh, I wouldn't know just exactly, Mr. Capuano, what the exact date was.

Q. Well, was it in the summer or fall of '66? A. Oh, no, it was definitely in the fall of the year.

Q. Fall of '66? A. Yes, sir.

Q. All right.

[130] And after you learned this what did you do, who did you talk to? A. I contacted the Tile Setters' business agent.

Q. All right. And what did you do next? A. And we met on the job.

Q. You met with the Tile Setters' business agents? A. Yes, sir.

Q. Anyone else? A. And Mr. Tom Zambon.

Q. All right.

And at that time did you make a claim for this work?

A. Yes, sir.

Q. And did Mr. Zambon make any reply to you when you told him this was your work? A. Well, only to what Mr. Zambon's testimony here was correct.

Q. What did he say? A. That the work belonged to him and he was going to do the work regardless of when the tile was set.

Q. All right.

And after this were there any other meetings held on the job site? A. Doug and I met out on this job a couple of times.

Q. Doug who? A. The Lathers—the Tile Setters' business agent.

[131] Q. Over this same thing? A. Yes, sir.

Q. And— A. And then at a later date I met out there with out International representative, Mr. B. F. McCullen, and myself and Brother Doug, International Representative Joe Marsak, and at that particular time the superintendent of the building, I don't believe that Mr. Webb took any part in the conversation that was between the two International Representatives and the two Business

Agent Representatives, but Mr. Webb was in the vicinity of this meeting.

Q. All right.

And did that meeting resolve this problem? A. No, sir.

Q. All right. And after that what did you do? A. I filed a Complaint and went through the regular procedures and filed a Complaint with the Board for the Settlement of Jurisdictional Disputes.

Q. The Joint Board? A. The Joint Board, yes, sir.

Q. All right.

Now, when you filed the Complaint did you file the Complaint with your International Union? A. Oh, yes, sir.

Q. And then they processed it for you, is that correct? [132] A. Yes, sir.

Q. Through the Joint Board? A. Yes, sir.

Q. Now, when you filed your Complaint with your International Union what name did you give to this job? A. Through an error of the Plasterers foreman on that job, that is where the science building and this library was a mix-up, I asked the Plasterers foreman on this particular job what was the name of the building, and he was working prior to this across the street, and through a fault of his he said the science building, or through a misunderstanding of mine, we did call this library the science building.

Q. But you were referring to the library? A. Yes. we were both referring to the library, yes, sir.

Q. Now, when you got the decision of the Joint Board, and I assume you did get a copy of it. A. Yes, sir.

Q. I believe that is right in front of you as Plasterers' Exhibit 3, is it? A. Yes, sir.

Q. That is the decision of November 10th, 1966. A. Yes, sir.

Q. What did you do then? A. Well, I got hold of, probably went first out on the job and talked to Tom.

[133] Q. Tom who? A. Mr. Zambon. And as Tom says, they don't abide by the Joint Board decisions. And then



I got hold of Doug, and I think it was about this time that we were talking about an agreement that existed that I didn't have a copy of. And I believe this is about this date. We went over to Mr. Zambon's office, and I don't recall the correct address of it, but Mr. Zambon wasn't in at this particular time, and that is the only time that I have ever been to their office.

Q. All right.

Did you ask Mr. McHargue to do anything after you got this Joint Board decision? A. Oh, yes.

Q. What did you ask him to do? A. Well, I asked Mr. McHargue would he abide by the Joint Board decision.

Q. And what did he say? A. And he informed me that he could not abide by the Joint Board decision.

Q. O.K.

Now, did you notify your International Union as to the Tile Setters' answer, that they wouldn't comply with the Joint Board decision? A. Well, I think that after I talked to Brother Doug and Tom Zambon, and they informed me that they couldn't abide by [134] the Joint Board decision, I also talked to Mr. Webb about this. Then I imagine the next day I put the picket on the job.

Q. In January of '67— A. After the decision was handed from the Joint Board.

Q. You mean after they told you—you say they couldn't comply with the— A. Comply with the Joint Board decision. And after the Joint Board rendered its decision and then I couldn't come to any agreement with Brother Doug or with Tom Zambon, then I did put the picket on the job.

\* \* \* \* \*

[152]

**Adolph N. Martini**

was called as a witness by and on behalf of Martini Tile and Terrazzo Company, and having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

## Direct Examination

Q. (By Miss Thacker) What is your position with the Martini Tile and Terrazzo Company, please? A. I am president.

Q. Did you have a direct contract for certain tile installation at Rainbo Baking Company? A. Yes.

Q. To whom did you make the work assignment for this work to be done? A. To the Tile Setters.

Q. Do you have a collective bargaining agreement with them? A. Yes.

\* \* \* \* \*

[154] Q. In your contract with Rainbo are you bound by the National Joint Board? A. No.

Q. Are you a member of the local Tile Contractors Association? A. Yes.

Q. Are they bound by the National Joint Board? A. No.

Q. Are you a member of the National Tile Contractors [155] Association? A. Yes.

Q. Are they bound by the National Joint Board? A. No.

\* \* \* \* \*

[156] Hearing Officer: So let me read that over and see if we can get a stipulation as to that being the words:

"Plasterers Local No. 79 protests sub-standard conditions, Martini Tile Company, Incorporated. Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or a concerted refusal to work."

[157] Do you stipulate that that is what the sign said?

Mr. Capuano: Yes.

\* \* \* \* \*

[159] Q. And when did your men go back on the job? A. They went back the following week-end because Rainbo was tied up during the week. See, this is a remodel job and we had those people shut down for a while, and we

couldn't work in the daytime, it had to be done in the latter part of the week when they could shut down a certain portion of their equipment, and we had to get in there and get out of it.

• • • • •  
 Q. Then when did you start the job back up again, Mr. Martini? [160] A. We started the tile up the following Friday.

Q. The following Friday? A. Yes.

Q. So then it was from March 17 when the picket was initially put up and then you started up the following Friday. A. That's right.

Q. And you completed it. Or is there more work that you have to be done on that particular job, or are you completed with it? A. No, no, there is quite a bit of work that is going up there, and they are putting tile wainscoting from the floor to the ceiling, which is about twelve feet high, and we have to do it just at times when the spaces are available, that they can turn over to us, but they are going to tile the entire building before it's over with.

• • • • •  
 Hearing Officer: I think, so that the record will be clear, I think maybe we ought to define the work that was being done by the tile setters at the time Mr. Longshore came to you.

Now, just briefly. Don't go into too much detail.

The Witness: Yes. I might explain it in this manner, that this is a remodeling job, and they have painted brick walls in there, and some of the paint is very heavy on there, [161] and rather than to chip the paint off and create a lot of dust hazard, and one thing and another, in the bakery, we elected to nail metal lath over the brick walls with concrete nails, and following that we put our setting bed on there, which was approximately a half inch thick. And then in floating those large walls up we had a lot of equipment to work around, and we had to go from the floor to the ceiling. In order to get a straight

line, to strike our lines on the walls, to keep the walls straight, we used on top of the lath, we used wood lath strips that we float our mortar on in a conventional manner to form our setting bed.

Then when the Rainbo people would let us go back in there sometime the following day, sometimes a little bit later, we would set our tile on our setting bed. Sometimes we could do it the same day. Sometimes we couldn't.

Hearing Officer: This setting bed you are talking about is what you believe Mr. Longhore was referring to when he asked you to give this work to the Plasterers, is that correct?

The Witness: Yes, that is correct.

[167] Hearing Officer: I think he described the process as having a painted brick wall and nailing some metal lath onto it and putting the setting bed onto the metal lath. Now, you may not use that in your terminology, but I think you understand what I mean. Is this the work that the plasterers would claim as their work?

[168] Mr. Capuano: If the tile was not installed on the same day, yes.

Hearing Officer: In other words, if it were not wet?

Mr. Capuano: Right, if it were allowed to harden and he came back another day and put tile on that coat of mortar with this L.&M. that he is talking about, we would claim that coat of mortar.

Hearing Officer: All right. Now, is this setting bed, is this work that is claimed by the Tile Setters?

Miss Thacker: Yes.

Hearing Officer: O.K.

#### Cross Examination

Q. (By Mr. Shepherd) Mr. Martini, you said this meeting was held in the office of the Plasterers Union on the 20th? And when did the pickets go up on this job? A. That was on the 17th.

Q. 17th. How long were the pickets up? A. Oh, they were gone by noon out there.

Mr. Longshore: Three hours.

A. After we pulled our men off the job they had nobody to picket.

Q. (By Mr. Shepherd) Well, I mean, your men stopped because of the pickets, because of the great number of other [169] union men that were employed in the plant.

A. That's right, we pulled our men off because we didn't want to embarrass our client out there, Rainbo Bakery.

\* \* \* \* \*

[173]

**Henry Bertolini**

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

[174] Direct Examination

Q. (By Miss Thacker) Mr. Bertolini, what company are you with? A. The Bertolini Brothers Company.

Q. Is that in Youngstown, Ohio? A. Yes.

Q. And what is your position? A. President.

\* \* \* \* \*

[175] A. Two brothers, two other brothers and myself.

Q. Are you active in the National Association? A. Yes, I am Vice President of the Tile Contractors Association of America.

Q. And have you held other positions there? A. Yes, I have been a Regional Director for about four years. This is my second year as Vice President. I also serve as technical committee chairman.

Q. Are you connected with C.S.I., that is— A. Yes, I am a professional member of Construction Specification Institute. I am also a member of the American Society for Testing Materials.

\* \* \* \* \*

[179] Q. (By Miss Thacker) Now, Mr. Bertolini, will you identify the National Agreement of the Setters and briefly what it covers. [180] A. Well, the National Agreement, T-2, is between the Tile Contractors Association of America and B.M. & P.I.U. of America. This agreement is between our association and the Bricklayers to set out what constitutes the work that belongs to the craft known as the Tile Setters. It sets out the agreement, the days that it was in session, what the Tile Layers' work is to be defined as, what the parties agree to as far as workmanship of, I am sorry, the quality of the workmanship.

It defines methods of apprenticeship. It defines what working hours will constitute shift time.

It defines the method of bargaining at the lower level. It defines methods of arriving at, not arriving at, I am sorry, of setting arbitrations between member signatures of this agreement.

Q. Does it recognize the National Joint Board? A. It does not.

\* \* \* \* \*

[181] Q. (By Miss Thacker) Mr. Bertolini, are Martini Tile and Terrazzo and Texas State Tile & Terrazzo members of the National Association? A. Yes.

Q. So they are bound by this National Agreement which you have in your hands? A. They are bound by the National Agreement.

\* \* \* \* \*

[183] Q. (By Miss Thacker) Now, Mr. Bertolini, have you observed [184] the laying of tile over a period of years, have you seen the craft at work and you have observed it? A. Yes.

Q. Closely over a period of years? How long? A. Since 1939.

Q. Is this a daily observation or a weekly observation or what is the frequency? A. Beginning from 1939 it was daily. And as the years progressed and I became an

officer in the company, it diminished to probably two or three times a week.

Q. Now, do you have occasion in your capacity now and from the time that you came into the company to observe the plasterers at work? A. Yes.

Q. About the same, with the same frequency? A. Yes.

Q. So that you feel that you would be acquainted with the work of both crafts? A. I would say yes.

Q. Are you familiar with the various methods of setting tile? A. I am.

Q. Would you describe to us the conventional method?

A. The conventional method is generally accepted to be three coats of mortar installed over a metal lath back-up [185] which has been scratched and if necessary plumbed by the plasterers. Both scratch coat and plumb coat are to be scratched. The tile setter then installs his final setting bed onto which the tile are installed.

Q. Now, are you familiar with the 1917 agreement between O.P. & C.M.I.A. and B.M. & P.I.A.? A. I have read it.

Miss Thacker: May I offer this in evidence at this point, Mr. Hearing Officer?

Hearing Officer: It will be marked as T-4.

Miss Thacker: Please.

Hearing Officer: Would you mark this as T-4, please?

(The document above-referred to was marked Texas State's Exhibit No. 4 for identification.)

Q. (By Miss Thacker) Now, this was an agreement between the two unions? A. Correct.

Q. Do you know—

Mr. Capuano: What are you reading?

Miss Thacker: The 1917 agreement, page thirty-two.

Hearing Officer: Why don't we get him to identify this book first to have the record clear. What is this T-4 you have in your hand?

The Witness: T-4 is a plan for settling jurisdictional disputes nationally and locally, and it's approved by the

Building and Construction Trades Department, AFL-CIO, [186] agreements and decisions rendered affecting the building industry by the AFL, the Building Trades Department, AFL-CIO, the National Board for Jurisdictional Awards.

Hearing Officer: O.K., that is enough. Are you familiar with this book?

The Witness: I am familiar with the parts that pertain to the B.M. & P.L.U.

Hearing Officer: You have occasion to utilize these parts of the book?

The Witness: Yes.

Hearing Officer: O.K.

You may go ahead, Miss Thacker.

Q. (By Miss Thacker) All right. Now, this agreement is specifically between the two unions, is that right? A. This particular one, yes.

Hearing Officer: What agreement are you talking about?

The Witness: I am talking about the agreement—oh, I am sorry.

Miss Thacker: It's on page thirty-two, Preparation of Walls and Ceilings to Receive Tile.

Q. (By Miss Thacker) Do you know of any agreement between the two unions that has been made since this 1917 agreement? A. I believe one in 1924.

Q. That is over here on page 104. A. 104.

[187] Q. Now, this is where they reaffirmed it. Now, this applies to the conventional method that you have just described—

Mr. Capuano: I am going to object, now. If he is an expert witness let him testify. Miss Thacker insists upon putting in her own comments and in effect testifying.

Hearing Officer: Sustained. Please don't lead the witness.

Q. (By Miss Thacker) Now, this agreement of 1917, does this pertain to the method, or what method does it pertain to? A. This agreement pertains to the method, to the conventional mortar method, commonly called in the



trade as the mud method, which says that the plasterers do have the right to plumb, rod and square all walls and scratch same so as to guarantee adhesion of the final coat which shall be put on by the tile layers to act as a bed for his tile.

It further states that the same is applicable to all ceilings, that again that it shall be leveled and rodded and properly scratched so as to guarantee adhesiveness of the final coat which is to be applied by the tile setter and act as a bed for his tile.

Q. Now, is there anything different shown in the February 21, 1924 decision on page 104? A. I believe that it just confirms it, or reaffirms it.

[188] Q. Reaffirms it. All right.

Now, that has to do with the conventional method. Now, would you describe for us, please, the one coat or float coat method? A. The one coat method is an abbreviation of the conventional mortar method, was devised for almost a specific purpose, of installing tile in remodeling work over back-up that was already in place. Having a back-up there which could be either brick, block, sheetrock, plaster, plastic tile. As long as there was a back-up there you applied expanded metal lath to this back-up. And in one procedure you installed a final setting bed for the ceramic tile onto which was installed, or which is installed the ceramic tile. This entire procedure is known as the one coat method. Normally in a bathroom a tile setter will go in and do this whole procedure in a residential bathroom in one day.

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[193] Q. (By Miss Thacker) Now, Mr. Bertolini, would you describe to us the thin set method? A. The thin set method is a method of installing ceramic tile over back-up walls with a bond coat. This can be a so-called dry set mortar. It can be an organic adhesive. It can be a epoxy. It can be a polyester formulation. But generally it is in those four broad classifications.

You use this material to attach tile to a surface prepared by others.

Q. This bonding agent that you have just described, these various things that it may be, can that in any sense be referred to or called a setting bed? A. We do not call it the setting bed because it in no way can determine the method or the finished appearance of the tile. I mean, I am sorry, it does affect the finished appearance of the tile, but since it is not under the control of the tile setter we cannot call the back-up wall the setting bed, so the adhesive line, the glue line, as some people call it in a derogatory mood, is used to adhere the tile to the back-up wall.

Q. Now, is there any difference in the guarantee which you as a tile contractor can give on the conventional method, [194] the one coat, float coat method, and the thin set method. A. In the conventional method the tile setter and the tile contractor install the tile setting bed, which controls the finish line of the tile. Therefore, he must assume the responsibility of the finished appearance of the tile wall. When the tile contractor and his tile setter install the one coat method he also controls the setting bed of the tile and therefore must assume responsibility. In the dry set method, or the thin bed setting method—

Hearing Officer: That is the same method?

The Witness: Yes. In the trade there's three, you can call it the dry set method, the thin set, some call it the thin bed.

Hearing Officer: It's all the same thing?

The Witness: It's all the same thing.

Hearing Officer: Go ahead.

A. It's the way that someone has got the words out. It probably more properly is the thin set method. Now, the thin set, since you are installing tile over walls prepared by others, over which the tile contractor or the tile setter have no control, the tile setters through their union and the tile contractor being the employer, cannot assume the finished, the responsibility of the finished work of the tile because with the thin line of adhesive or a thin line of

dry set mortar, the tile must, within certain minute [195] corrections which are possible, must follow the wall that is there. And therefore he cannot assume the responsibility for the quality of the work.

Q. (By Miss Thacker) Now, then, insofar as the bonding agents are concerned, with the advent of the organic and inorganic, has it made a difference in the setting of tile, any material difference? A. Well, the advent of dry set mortar has allowed tile to be installed in many instances where ceramic tile was not use before because by using the thin set method it was very easy to install tile over masonry walls in either Haytite block or cement block without the use of any other preparatory methods. And therefore, the architect could achieve a finished wall resembling a conventional mortar method in appearance, but the finished appearance was not always as nice as the conventional method, but because of the savings in cost he accepted that.

So a title contractor was able to figure walls where we weren't able to figure before.

Also in remodeling it was possible in the thin set method to install tile using an organic adhesive over finished gypsum plaster that maybe had been in for years before and the home owner had just decided he could afford the money to put tile in and the contractor applied tile with this organic adhesive over finished plaster.

[196] Let's see, continuing, the other advantage of the invention of dry set mortar has been to allow the contractor the option of when installing tile in the conventional mortar method, because of the temperature or because of job conditions, to allow him to float his final setting bed and not necessarily cover that final setting bed while the bed was still plastic or wet, but allowed him to come back the next day and install the tile and still be assured of a bond equal to or better than he would have had the day previous.

There are times because of temperature that the final setting bed starts receiving its initial set before the tile

can be properly adhered with a neat cement bond or neat cement or bond coat. And therefore the tile contractor through his tile setter defers putting the tile up but prefers to wait until the next day and set the tile using, again, either dry set mortar or a neat portland cement coat.

If on metal lath, more often than not, metal studs, because of the flexibility of the metal lath and the fact that a tile setter must beat his tile into the wall, the vibrations which occur would defeat the bond between the final setting bed and the scratch coat or the plumb coat that has been previously applied, he defers again the setting of the tile until the next day when his setting bed has firmed up enough that he can then apply the tile without disturbing his lines.

[197] And, of course, job conditions would be to allow a tile setter to put up his final setting bed in areas where there is other traffic, where there is inconvenience, and therefore he puts up his setting bed one day, comes back at a later time, even in the evening, or the following morning, and puts his tile up.

In the use of ceilings, it is extremely difficult to install tile in a wet mortar, and has been generally the custom of the trade to float his tile setting bed one day, either late in the afternoon, and come back the next day and prior to the advent of dry set mortar, install his tile with a neat cement coat.

With the use of heavy tile, such as quarry tile, handmade faience tile, which is a relatively thick, heavy body, laid in the wet method because of the weight of the tile, it is extremely difficult to put tile on a wet setting bed, and again if it was on a metal lath where he even had to beat it, there were two reasons for him to withhold it, and it has been the custom of the trade for many years when installing heavy faience tile wainscoting or quarry wainscoting to float out the final setting bed for the tile and come back the next day and set the tile with a neat

cement coat, not dry set mortar or adhesive, but use a neat cement coat.

\* \* \* \* \*

[203] Hearing Officer: Well, then you will stipulate that these are the specifications with Rainbo Bakery?

Mr. Capuano: If Miss Thacker tells me that is all there is, I will take her word and stipulate to it.

\* \* \* \* \*

[221] Q. (By Miss Thacker) Are you familiar, or rather do the apprentices learn to put on a float coat? A. Yes.

Q. What per cent of their time, of their total time, as apprentices is spent in learning to do this? A. The major portion. It would be probably difficult to say the percentage unless you include the procedures that lead up to the installation of the float coat, which start with learning the proper mixes for the different type of installations, how these mixes are to be made, how they are applied to the wall with a hawk and a trowel, the preparation necessary to plumb, rod and square a wall, the use of float strips, as we call them, or lattice strips, screed strips, they are all three the same, the use of a level, the use of a square, the use of the hawk and trowel, all pertain to applying mortar to a wall.

This is a major portion of a tile setter's apprenticeship program because this is the part that—I can't think of the word—which rules the finished appearance of the wall.

Now, also, of course, the apprenticeship covers the [222] same thing in floors, so what percentage I couldn't really say, but maybe forty per cent of his time.

Q. How long does he generally spend in learning to apply the adhesives or the bonding agent? A. A comparatively relatively short time. The apprenticeship program covers about four years of time, and in this four years he learns all of these different trades, sometimes working at a different portion of it for three or four months. The thin-set method is learned about the last three months of his apprenticeship since it should be learned after he

has learned how to plumb, rod and square a wall, because there are applications when this is required and he must apply the tile in a thin-set method over these walls, but a majority of the time these are applied over other surfaces, and therefore the skill is much less.

\* \* \* \* \*

[224] Q. (By Miss Thacker) Now, in the 1917 agreement it says that the plasterers are to scratch, plumb, rod and square so as to guarantee adhesion of the final coat. Why is this necessary, Mr. Bertolini? A. For the reason mentioned, that unless the plumb coat is scratched you cannot guarantee the adhesion of the final setting bed.

Q. What would happen? A. You would not achieve proper bond and you—it is possible to get a delamination or what is a separation of the final setting bed and the plumb coat, and therefore you would have a faulty installation.

\* \* \* \* \*

[225] Q. Now, does the March '67 clarification of the Joint Board specify that the plasterers are to scratch the final coat— A. No.

Q. —that they apply? A. No.

Q. If this final coat that the plasterers apply is not scratched can the tile setters proceed with their float coat? A. They can, although it is not in the best interests of the job to proceed because you are not guaranteeing adhesion by keying in with the plumb coat. The tile, the final setting bed of the tile setter can adhere to a plumb coat that is not scratched, but to insure that it is going to key in and bond properly, it has always been the requirement that the plumb coat be scratched.

Q. Now, if this coat, the final coat, that the plasterers apply is scratched, can there be a thin set? A. No, because of the surface of the scratched surface, [226] the surface of the scratch is so irregular and rough and gritty that applying an organic adhesive would be futile. An epoxy would be the same. A dry-set mortar could pos-

sibly be done if you were to again treat the wall, but again the grittiness and the rough texture would preclude a proper finished appearance to the tile wall.

Q. Can you account for any reason that the term scratch is suddenly eliminated in this clarification when it is in the agreement between the two unions?

Mr. Capuano: Well, now—

A. I cannot.

\* \* \* \* \*

[227] Q. (By Miss Thacker) All right. The initial agreement between the two unions, the 1917 agreement, says that the final coat applied by the plasterers is scratched.  
[228] A. Correct.

Q. Now, in the clarification, March '67 clarification by the Joint Board, this is not an agreement between the two unions but a clarification, but it refers to the 1917 agreement, and the term scratch is deleted as to their final coat.

Now, I am saying with the deletion of this word scratch is it feasible from a construction standpoint for a tile setter, then, to apply his float coat if it's a conventional method—  
A. No.

Q. —or the thin-set? A. If it's a conventional method, no. If it would be the thin-set bed, yes.

Q. All right.

Then there would be, if it were thin-set, then who would be putting on the setting bed? A. The plasterers.

Q. And why? A. Because they are installing a back-up wall with a finished surface over which a one-eighth inch or maybe even as thin as one-sixteenth of an inch bond coat of dry-set, organic adhesive, can be applied.

Q. Now, according to the 1917 agreement, where it says that the plasterers shall plumb, rod and square, is this a [229] final or a preliminary plumb, rod and square? A. This has never been the final setting bed. The plumbing and rodding and squaring of the wall prior to receiving the final setting bed has been the work of the plasterer, but it has been scratched in order to guarantee the adhesion of



the final setting bed. This is not the coat on which the tile are bonded.

Q. All right.

Now, in the March '67 clarification, we have a clause which says that if it's set during the same work day in which this is, and this is in quotes, "set during the same work day in which such coat is applied the plaster materials shall be applied by tile setters in the interest of efficient job operation."

Now, let's look at this particular terminology, Mr. Bertolini. Is it always feasible for a tile contractor to set tile the same day it's floated, the wall is floated? A. There was never any ruling, there was never any mention in the agreement—

Mr. Capuano: Now, I am going to object. She asked him a simple question, is it feasible to do this. Now, we are getting what is in the agreement.

Hearing Officer: Try to be responsive to the question. Did you understand the question that she asked? She wants to know about feasibility.

[230] Mr. Capuano: The feasibility of setting tile the same day while the mortar coat was wet, is it feasible?

The Witness: Oh, yes.

Mr. Capuano: That is all that was involved.

Hearing Officer: O.K. Go ahead.

Q. (By Miss Thacker) Is it always feasible? That was my question. A. No.

Q. Why? A. Because of job conditions, because of time of the year which involves temperature, winter, summer, heat and cold, type of tile to be installed, and the area to which the tile are to be installed, would govern whether the tile could be properly adhered to the final setting bed on the same day.

\* \* \* \* \*

Q. Generally does a tile contractor like to float out his entire work—



Hearing Officer: I am going to—

Q. (By Miss Thacker) —first from the standpoint of job efficiency?

\* \* \* \* \*

[231] A. Yes.

Q. (By Miss Thacker) Why? A. Because he can minimize the amount of operations that a tile setter must do in one day. Rather than go through the entire procedure of floating, bonding and installing tile and cleaning down the tile wall, he would, in order to expedite and cut the cost of the finished product, install his tile setting bed in a large area continuously throughout [232] the day with the express intent of coming back the following day and covering that area with ceramic tile.

Q. Now, you as a tile contractor who has been in business many years, would you be willing to submit to some rule or regulation which told you when you were to set your tile? A. No.

Q. Do you feel that that is your prerogative as to when you set it, whether you set it today or next month? A. Yes.

Miss Thacker: I believe that is all, Mr. Hearing Officer.

Oh, wait just a minute.

Two more questions, Mr. Hearing Officer, please.

Hearing Officer: Go ahead.

Q. (By Miss Thacker) When the tile setter installs his float coat does he at that time establish the finished dimensions? A. That is one of the criteria.

Q. At the time when the plasterer puts on his final coat are these finished and completed dimensions the same? A. No.

Q. His is preliminary, then, I mean, the plasterer? A. Being a—may I elaborate?

Hearing Officer: Sure, go ahead. I think it calls for it.  
[233] A. Being that the plasterer is installing the plumb coat only, he would have no way of knowing what the final dimension requirements are, what dimensions must be met

by the finished tile, since the setting bed regulates not only the final dimension but the appearance of the tile, the plumbness, trueness of line, correctness of pattern.

Q. (By Miss Thacker) Now, as an employer, as a tile contractor, do you have a preference as to work assignment to any one craft? A. Yes.

Q. Which one? A. We have, as an employer, assigned the scratching of the lath and the plumbing and rodding and scratching of the plumb coat to the plasterers and we have assigned the installation of the final setting bed and the bond coat and the tile to the tile setters.

\* \* \* \* \*  
[234] Cross Examination

\* \* \* \* \*  
[254] Q. O.K.

Now, would you get—do you have a copy of the green book there, T-4?

Would you look at page thirty-two, please? A. I am.

Q. I believe you testified on direct that the 1917 agreement pertains to the conventional method, is that right, of setting tile? A. Yes.

Q. Now, could you tell me if any place in that 1917 agreement it refers to the words conventional method of setting tile? A. It does not.

Q. How about the agreement listed on page thirty-three, [255] the agreement between the Interstate Mantel and Tile Contractors Association and the two unions, does that use the words conventional method any place? A. I have not read it but—

\* \* \* \* \*  
A. It does not specifically refer to the conventional mortar method.

\* \* \* \* \*  
[257] Q. All right.

Look on page 104 of T-4, would you, please? A. Yes, I looking at that.

Q. See the decision of February 21, 1924. Are the words conventional method of setting tile used in that decision?  
A. They are not.

Q. Now, do you as a tile contractor recognize this 1917 decision and 1924 decision? A. We generally have.

Q. You abide by it? A. Yes, we do.

Q. You assign your work when you are doing it— A. Yes.

Q. —like that, right? A. Yes.

Q. Do you know approximately when dry-set mortars came into being? A. Early '50s.

Q. Pardon me? A. In the early 1950's.

Q. Would it refresh your recollection if I said [258] approximately fifty-five or fifty-six? A. No more than that I just said because I am not positive as to the time because it was developed actually in this area and migrated throughout the country, and I can't say just when it really became a known product, such as dry-set mortar.

Q. O.K.

Now, going back to this T-4, what is the first thing that the agreement says must be done to the wall?

Hearing Officer: Are you talking about the 1924 agreement?

Mr. Capuano: No, I am talking about the 1917 agreement, page thirty-two of T-4. A. Well, it says here that, "First, it is agreed—"

Q. (By Mr. Capuano) No, I don't want you to read the whole thing. I just want you to tell me the first thing that must be done to the wall under the agreement, starting from the rough— A. "Shall prepare or plaster the walls."

Q. All right. And what would that include? A. It would include the plumbing, the rodding, the squaring and the scratching of same.

Q. All right. And then the tile setter would come and he would have certain things to do in this agreement or under this agreement, right? [259] A. Yes, it says here he would put on the final coat.

Q. It means he would put on the final setting bed, is that right? A. Yes, sir.

Q. And then the next thing would be the setting of his tile, right? A. Onto the setting bed.

Q. Yes, onto the setting bed. A. Right.

Q. So we have got four or five tasks outlined there, right, setting the wall, plumbing, rodding, squaring. A. Yes, some of those tasks are actually done simultaneously.

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[260] Q. Let's take a situation where the specifications provide on a job that you have got a concrete block wall, and the plasterers, or let's leave out the plasterers, let's just say a coat of mortar is to be put over those walls to plumb them, level them, square the room, and tile will be set with dry-set mortar. Follow me? A. I do.

[261] Q. In that situation isn't the wall being plumbed, the room being squared, the tile being set? A. If the work is done by the tile setter, yes.

Q. You are not answering my question. I didn't use any craft names. I simply said doesn't the room have to be plumbed, the wall, I mean the wall plumbed, leveled, the room squared, and the tile set? A. Well, when you say "have", you see, if you said "should"—

Q. Don't try to— A. I am sorry, but when you say "have to be," it probably should be, but whether it has to be is something else.

Q. The specifications provided that. So according to the specifications these things have to be done, don't they? A. All right. Yes.

Q. O.K.

So now we have got certain tasks that have to be performed, don't we? A. Yes. All right.

Q. Certain functions that have to be performed, regardless of who does them, they have to be done, don't they?

A. To get the tile on the wall, yes.

Q. Right.

And the 1917 agreement provides certain functions that have to be done, doesn't it? A. Yes.

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[263] Q. (By Mr. Capuano) O.K. Let's take the American Standards Association. Do they recommend installing tile in the conventional method on a dry bed? A. Conventional method on a dry bed.

Q. Yes. A. No.

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[264] Did I understand you to say yesterday that in installing ceilings you put, again we will stick with ceramic tile, glazed ceramic tile, that you install those on a dry bed? A. Yes.

Q. Is that a recommended procedure by the American Standards Association? A. No.

Q. Do you know who the American Standards Association is? A. Yes.

Q. Who is it, or what is it? A. It is a group that are responsible by procuring from related people and trades who set up a method or a specification for the installation of that product.

Q. The recommended specifications for the industry, aren't they? They are the standards for the industry? A. They are a standard.

Q. For the industry? A. Yes, they are a standard.

[265] Q. As a matter of fact, they make specifications for the installation of tile in Portland cement mortars. A. They do.

Q. And personnel on the committee preparing the specifications include representatives of your group, don't they? A. Oh, yes.

Q. And it includes representatives of the Bricklayers, doesn't it? A. It does.

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[267] Q. Do you know whether in P-7 there are any provisions for installing of quarry tile or whether—let me

cross that. Do you know whether P-7 recommends the installation of quarry tile on a dry bed?

Let me ask you this first— A. Do I know? Yes, I do know.

Q. You do know. Does it recommend setting quarry tile— A. No.

\* \* \* \* \*

[271] Q. (By Mr. Capuano) All right. I show you what has been marked as Plasterers' Exhibit No. 8 and ask you if you can identify that. A. Yes, I can.

Q. Would you tell us what it is? A. It's commonly known as A 118.1, American Standard Specifications for the installation of ceramic tile with dry-set Portland cement mortar.

\* \* \* \* \*

[272] Q. Did you read it? (c).

Does it refer to the dry-set mortar as the mortar setting bed? A. It refers to it as a mortar bed.

Q. I am sorry, mortar bed, yes, you are right.

And that is talking about the dry-set mortar which is going to be used to install the tile, isn't it? A. It is.

Q. Now, let's go over to page ten, Section 5-4.1. See that, Application of Mortar? A. (a), did you say?

Q. Yes. Well, that is what I want you to look at. A. "Mortar bed to be minimum of one-sixteenth inch."

Q. What mortar bed are they talking about? What is that mortar bed composed of? A. Of dry-set mortar.

Q. Dry-set mortar. And you are going to put your tile right on there, is that right? A. Oh, yes.

Q. And there will be dry tile used? A. Yes.

Q. You can use a dry wall to put it on, correct? A. You can.

Q. How about over on page twelve? They are talking about floors there, I believe. I don't want to mislead you.

[273] Do you see it? A. Thank you.

Q. See Section 5-5.1(b)? A. Mortar bed.

Q. Mortar bed. And they are talking about the dry-set mortar again, aren't they? A. They are.

Q. Now, if you look, if you go back to page three, you see a Section E-2? A. I do.

Q. Requirements of Related Trades.

Would you read (a) for us, please? To yourself. A. I have read it.

Q. It provides that certain work will be included in other specifications or for other trades, doesn't it, and that it includes those specifications in Appendix A in the back of the book, correct? A. It doesn't necessarily say other specifications.

Q. Well, all right, it says— A. It says of the appropriate section of the specifications.

Q. All right, for other trades? A. Not necessarily.

Q. All right. Why don't you turn to Appendix A and see what that is entitled. That is on page thirteen. What is that entitled at the top? [274] A. Related Trades.

Q. No, read the whole title. A. Oh, I am sorry. Requirements to be included in Related Trades.

Q. All right.

And do you see Section A-3 on page thirteen? What is the title of that? A. Lathing and Plastering Trades.

Q. And read it over to yourself, will you, please, quickly? A. I have read it.

Q. Down to about (d). Did you read that? A. All right.

Q. That provides, doesn't it, that when you are going to have a mortar back-up to tile for the installation of tile installed with dry-set mortars that the scratch coat or brown coat installed by the plasterers, doesn't it? A. It does.

Q. And it provides for the brown coat of the plasterers to be plumb and square, doesn't it, plumb with square corners, in Section (c), Sub-Section (c)? A. Correct.

Q. Referring you again to P-8, who will, what craft will put on the mortar bed referred to on page five that you talked about? And it's also on page eight, page ten. A.

The mortar bed will be put on by the tile setter installing [275] the tile.

Q. O.K. Now, getting back to your original statement. A. Which one?

Q. I am going to tell it to you. I was just looking for it in my notes. A. O.K.

Q. That the dry-set mortars are not called setting beds when the back-up is prepared by another craft. Do you recall that? A. I think I do.

Q. All right.

You disagree, then, with the American Standard Specifications, don't you? A. In a way I kind of agree with them because they say it's just a mortar bed. They don't call it the final setting bed.

Q. All right, call it a mortar bed. You just told me that is what the tile is going to be installed in, isn't it? A. It is going to be installed into this, as you call it, the mortar bed. We do not call it such.

Q. The American Standard Specifications refer to it as the mortar bed? A. Correct.

Q. Doesn't it? A. Yes, it does.

Q. And the American Standard Specifications, P-7 and 8, [276] don't differentiate in the terminology of that bed regarding which craft puts on the back-up for it, does it? A. It does not.

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[280] Q. (By Mr. Capuano) Mr. Witness, we were talking before the break about a crooked door buck. Do you recall that? A. Yes, I do.

Q. You have had time to think about it now. A. Yes.

Q. Where your tile, you may have only half a tile at the bottom of the door frame, but because the door frame is crooked you have got three-quarters of a tile at the top. Do you recall the situation? A. Yes, very definitely.

Q. The door frame would not look good, would it? A. It would not.



Q. Your tile would look crooked where it butted up against the door frame, wouldn't it? A. The cut would be out of plumb.

Q. You could see it, too, couldn't you, the difference between the half and the three-quarters? A. Yes.

Q. Your tile setters don't claim the installation of the door buck, do they? A. They do not.

Q. Now, you have installed tile wainscoting, haven't you? [281] A. Yes.

Q. And where above the tile is going to go some other material, for example, plaster. A. Yes.

Q. What other materials could go above the wainscoting? Marble? Would you have marble above it? A. Not generally.

Q. Not generally. All right. What are some other materials? A. Cement block.

Q. Cement block. All right. Let's stick with the plaster. You have got a situation where you have got tile wainscoting, plaster above it. You would generally have a casing bead between the tile and the plaster above it, wouldn't you? A. No.

Q. You say you would not? A. No, not generally.

Q. Not generally. All right. You have had casing beads separating the tile from the plaster, haven't you? A. We have.

Q. If the casing bead is crooked and the plaster runs down to the casing bead and your tile runs up to the casing bead, you are going to have small cut tiles on one end, larger tiles on the other other end, aren't you? A. This casing bead, now, runs horizontally?

Q. Horizontally, yes, that's right, horizontally. [282] A. And we are going to have cuts where, Mr. Capuano?

Q. Well, at one end of the casing bead that is lower than the other end you may have a full tile at the low end and at the higher end you will have to have pieces of tile. A. Why?

Q. If the casing bead is running at an angle, not straight, horizontally. A. You are presupposing something that I don't assume, and that is that we would cover the casing bead.

Q. I am not telling you you are covering it. I am saying you are going to run up to it. A. Oh, I am sorry. In other words, you are going to install the ceramic tile flush with the finished wall of the plaster.

Q. Yes, and you are running up to the casing bead and the casing bead is not, say, level. It goes on an angle instead of being level in a horizontal plane. A. Well, if tile had to be installed in that instance the cut on the top of the tile would be out of level.

Q. You could see it, couldn't you, if it was out of level enough? A. Yes, you would.

Q. Who installs the casing beads generally, what craft? A. If it's a metal casing bead I would presume it's the lather.

Q. Do you know if the tile setters claim the installation [283] of the casing bead where they are running tile up to it? A. No.

Q. No, they don't? A. They do not claim it.

\* \* \* \* \*

[284] Q. (By Mr. Capuano) Now, if I understand your testimony correctly, you as a tile contractor would guarantee the tile installation if you installed the back-up when dry-set mortars were to be used to set the tile, is that correct? A. We would.

Q. Now, when you are putting tile with dry-set mortar directly onto a concrete block wall, do you or do the tile setters claim the installation of the concrete block wall? A. We do not.

Q. Now, do you know if any other crafts, any other contractors on jobs, have to guarantee the installation of their work? I am talking about generally. [285] A. I would presume that they have some form of guarantee. Whether it's identical to ours I can't say.

Q. And would you say as a contractor that has been in business a long time that generally owners and architects require every sub-contractor, as well as general contractor, to guarantee the work he installs for a period of a year, one year? A. Yes.

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[287] Q. (By Mr. Capuano) Now, Mr. Witness, did I understand you to say yesterday that if a tile contractor installed the brown coat of mortar either on metal lath over the scratch coat or as the first coat on concrete block, for example, as was done in the bathrooms at the Anderson Library, then he came back the next day or two days or a week later, and installed the [288] tile with a dry-set mortar, did I understand you to say that that brown coat of mortar would be the setting bed? A. Yes.

Q. Even though the coat is dry, correct? A. Yes.

Q. Now, do the American Standard Specifications call the brown coat the mortar bed in the example I just gave you? Do you know? A. Does the American Standards Association call for the mortar—

Q. Do the American Standard Specifications— A. Which one, now?

Q. P-7. A. Oh, P-7. All right.

Q. No, I am sorry, P-8, the dry-set mortar, do they refer to the brown coat in the example I just gave you as a mortar bed or as a mortar setting bed, as you call it? You may look at it if you want. A. I couldn't answer that without an explanation.

Q. Pardon me? A. I couldn't answer that without an explanation.

Q. You couldn't answer that question without an explanation? A. Yes. I would have to see how the job is specifically specified.

Q. I will tell you. The specification call, you have got a [289] concrete block, the specifications call for a plumb coat of mortar, Portland cement mortar. A. Yes.

Q. Over that concrete block. A. Right.

Q. Then the tile is to be set with a dry-set mortar, L. & M., for example. You are familiar with L. & M.? A. The specifications specifically state dry-set mortar?

Q. Yes, dry-set mortar. And the tile contractor comes back after the coat of mortar is dry, the next day, a week, two weeks, puts his tile on the wall with the dry-set mortar. In that situation you indicated that the mortar coat or the brown coat was a setting bed, correct? A. If it's installed by the tile setter, yes.

Q. If it's installed by the tile setter, you say. It's not the setting bed if it's installed by the plasterer, right? A. Correct.

Q. Now, the American Standard Specifications make no distinction between who installs the brown coat behind the tile installed with dry-set mortar, correct? A. Correct.

\* \* \* \* \*

Q. That is all right. Now, let me ask you another [290] hypothetical question.

Let's take an example where the specifications provide that tile is to be installed in the conventional method, over wire lath, and the plastering— A. Over wire lath?

Q. Over wire lath. And in the plastering specifications it provides for a scratch coat, a brown coat, and the tile specifications it provides for a mortar setting bed. Set your tile in the conventional method. In that situation you would float your mortar setting bed on top of the plumb coat or brown coat of the plaster and you would install your tile right in that, correct? A. Yes.

Q. All right.

Now, supposing after the plasterer finishes putting on his brown coat, he has got a scratch coat on, he has put his brown coat on, now, under the American Standard Specifications for installation of tile and Portland cement mortars, P-7, it provides that the wall must be plumb, level, up to a tolerance of one-quarter of an inch in eight feet, correct? A. Yes.

Q. It does. O.K.

So after the plasterer puts his plumb coat on the wall, now, it's supposed to be the conventional method, you will recall, the tile setter is going to put the setting bed on, [291] the owner or the general contractor, the architect, decides that he wants this done faster or for any number of reasons, and he tells you, the tile contractor, don't bother putting on that mortar coat, put this wall up, install your tile with some dry-set mortar, Tec, L. & M. You go ahead and do that, right? A. We can.

Q. All right. When you do that what coat has been deleted? A. The final setting bed.

Q. Thank you.

Would you get T-6, please? I believe that is the ceramic tile specifications. A. I have them.

Q. Would you look at 15-4 of T-6? That is on page one, 1-1. A. Oh, I am sorry, I was looking at page 15-4. 15-4.

Q. You can read it to yourself. (a). There is only (a) there. A. I have read it.

Q. That is a standard type clause, isn't it, in specifications? A. Yes.

Q. And generally, so the record is clear, provides that you are supposed to inspect any work over which you are installing your work to make sure that it's O.K., and if it isn't proper [292] you are supposed to report it to the architect, right? A. Correct.

Q. In other words, if another contractor did something which you can't put your work over— A. Correct.

Q. —he will have to correct it, right? A. Yes.

Q. And if you go ahead and do your work you are accepting the prior work, correct? A. Yes.

Q. All right.

Now, look at 15-5, particularly (c). It describes a setting bed. Do you see that? A. Yes, I see it.

Q. Now, perhaps it would be better if you read right down to 15-7, not including 15-7, but I am referring to the

sections entitled Materials and Laying Tile. I would like to ask you some questions about that. A. Down to 15-7.

Q. Right. A. I have read it.

Q. O.K.

Now, in your opinion what method, which of the three methods you described to us, is the architect requesting that the tile be installed through these specifications on [293] the Anderson job? Or if none of the three methods tell us. A. Well, it isn't specific enough to really define whether it could be the conventional mortar method or whether it might be the thin-set method because of (c) under 15-5 it says, "The setting bed shall be one part Portland cement and three parts sand, with two pounds of Stearox 100," which I am sorry to say I am not familiar with, "added to each sack of cement."

If this was not installed, and I don't know what purpose it serves, this would normally be considered a pretty rich mix to use for the final setting bed, but as I have said before, I have not seen the job, I don't know how it's installed, and I am not sure, but I would, based on that assumption, I will say that this is a conventional mortar method.

Q. Conventional mortar method. O.K.

So that would mean that the tile should be soaked. A. Would be.

Q. And it should be set in that mixture of what the architect calls the setting bed, consisting of one part Portland cement and three parts sand, right? A. If I may digress, the tile should be soaked if they are set the same day.

Q. Well, in the conventional method don't you set it the same day? A. Not necessarily.

[294] Q. Well, I guess we will go back, then.

Didn't we discuss this before about recommended methods of setting tile in the conventional method? A. I think you were talking about recommended by A.S.A., and I am talking about the way it is normally put in.

Q. All right. A. Because tile are installed under other specifications than A.S.A.

Q. All right.

Now, are you telling me that in the conventional method of setting tile the normal procedure is not to set the tile the same day that you put on your mortar setting bed? A. It can be.

Q. Now, listen to my question again. I believe you heard it.

The normal method, isn't the normal method in the conventional way to set your tile the same day you install the mortar setting bed? A. No.

Q. That is not the normal way? A. No, as of today, no.

Q. As of how long ago was it? A. Sometime after the advent and the use throughout the tile industry of dry-set mortar has it been accepted that the conventional mortar method allows you the option of allowing the final setting bed to harden and the tile can then [295] be applied with a bond coat of dry-set mortar. Now, this has been accepted and there are specifications, not A.S.A., I will grant you, but there are others who specify it that way, and they call it the Portland cement—I mean, I am sorry, the conventional mortar method, allowing the contractor that option.

Q. So you are using dry-set mortars in the example you are giving me in answer to my question about the conventional method. A. They are using dry-set mortar as a bonding agent, that's right.

Q. O.K.

Well, now, we will specify some more details for you so you don't have to get into the dry-set mortar. We are talking about the conventional method of installing tile as set forth in P-7, American Standard Specifications for Portland cement mortars. Are you with me? A. Yes, sir.

Q. We are not talking about using dry-set mortars. We are talking about the conventional method set forth in P-7. A. Oh. All right. As set forth in P-7.

Q. Yes.

Q. Now, installing it in a conventional method, as I just described, the tile would be installed in the mortar setting bed the same day, wouldn't it? [296] A. As set forth in that, yes.

Q. Now, if this job were the conventional method, as I just described to you, the tile should be installed the same day that the mortar setting bed is installed, correct? A. I see no reference in this specification to A.S.A. specifications.

Q. Did you hear me put that in my question? A. That is why I can't answer you.

Q. All right. A. Because in your—

Q. I will try to make it so you can answer.

Would you please take a look at page 15-2, Section 15-6, Laying Tile, Section (a), and see if that is going to help you to answer my question?

Hearing Officer: What are you looking at?

Mr. Capuano: I am sorry, T-6. Those are the specifications for the installation of tile. A. It states there only as large an area as can be covered with tile before the mortar has reached its initial set shall be placed in one operation.

Q. (By Mr. Capuano) And you as a contractor would interpret, wouldn't you, the mortar they are referring to there is the mortar setting bed referred to back on page 15-1? A. Yes.

Q. So to get back to my question again, assuming, as you did, [297] that the architect is specifying the conventional method on the Anderson Library, the tile should have been set the same day that the mortar setting bed was installed, correct? A. According to these specs., yes.

Q. Thank you.

Did I understand you to say in your direct testimony that quarry tiles could not be set in a bed of mortar that was plastic? A. I didn't say they could not.

Q. Oh, you did not say they could not. A. I don't believe I said that.



Q. I am sorry, I wasn't sure what you said. A. Well, I mean, when you are telling me what I said it's hard for me to remember what I said.

Q. That's right, I understand that.

Well, in any event, you do know, don't you, that the American Standard Specifications, P-7, which you have in front of you, provides that when you are installing quarry tile, I am looking on page 20— A. That is all right, I am familiar with it.

Q. —that you should “float the mortar setting bed over areas no greater than may be covered with tile while the setting bed remains plastic.” A. That's correct.

Q. You disagree with them again? [298] A. No, I don't say I disagree with them.

Q. O.K. You just said it could be done, is that what you are saying? A. I think I said before that it could be installed on a dry bed.

\* \* \* \* \*

[313] Q. I don't mind—O.K.

Now, when you say a wall is plumb, what do you mean by that? A. That it has a true surface so that when you put a level on it that it does not vary from a plumb line, which could be achieved by using a plumb bob and a string, it does not vary from that true surface.

Q. O.K. A. That is considered to be plumb.

Q. I agree with you. A. O.K. At least we agree on something.

Q. And what do you mean when you say that the wall is to be square? A. Two adjoining surfaces, two adjoining vertical surfaces, [314] must be in ninety degrees when measured with a square or with whatever you would call the instrument that a surveyor would use.

\* \* \* \* \*

[318] Q. (By Mr. Capuano) Now, when you do work now in new construction, new commercial construction, I am not talking about small buildings, I am talking about a good size project, like some of the buildings we see going

up around here in Houston, are the buildings usually heated by the time you get in there, either temporarily or permanent heat operating? A. When conditions require it, yes.

Q. Many times the specifications require that there be heat in the building when you start doing your work, don't they? A. If the outside temperature falls below a certain requirement, yes.

\* \* \* \* \*

[322] Q. No, no, I am asking you a particular example. I want you to take this particular case, a college dormitory where you had a bathtub, and you installed tile around it and around the bathroom part of it. Now, where did you put Portland cement in that bathroom? Did you put it around the tub? A. We installed Portland cement at a wainscot level around the room and to a six-foot level around the tub.

Q. All right.

Now, wainscot would be what, three to four feet? A. Probably four foot six.

Q. Four foot six. And six foot around the tub. Did that reach the ceiling? A. No, it does not.

Q. All right.

What was above the six foot and the four foot? A. It was installed later and it was gypsum plaster.

Q. Gypsum plaster. All right.

So you had six foot over the tub, you had tile, correct? A. Correct.

Q. And you had Portland cement behind the tile? A. Yes.

Q. Did you have a coat of Portland cement or two coats on metal lath or something? [323] A. This was the conventional method and we installed the setting bed.

Q. O.K.

Then you had gypsum plaster above it? A. Yes.

Q. Did the plasterers put the brown coat below your setting bed? A. They scratched the metal lath.

Q. You put the— A. We did the plumb coat and the final setting bed.

Q. O.K.

And the plasterers up above your tile, around the tub, and around the wainscoting, put on a brown coat of plaster and then they put the white finish coat on, didn't they? A. Yes, they used the brown gypsum plaster rough coat, hair plaster, and then a gypsum white coat over the face of it.

Q. And they met your tile with their plaster? A. Yes.

Q. All right.

Now, would that be a common type job? A. I think so.

Q. O.K.

So in effect in that bathroom your tile setters didn't claim that gypsum, did they, above your tile? A. Never have.

[324] Q. So in effect you had two crafts putting on brown coats in the bathroom, one craft putting on a gypsum brown coat and another craft putting on a Portland cement brown coat? A. Portland cement float coat.

Q. I don't care what you call it. A. Plumb coat.

Q. One craft was putting on Portland cement and the other craft was putting on gypsum brown coat, weren't they? A. Well, unless the "were" is going to mean simultaneously, no.

Q. No, they weren't simultaneously. A. O.K.

Q. They had two crafts in there? A. Correct, two crafts would do the two types of work.

Q. You say this was a conventional job, too. A. Yes.

Q. So actually the plumb coat that your tile setters put on under the 1917 agreement, who would normally do that? A. Under the 1917 agreement it would have been the plasterers.

Q. So if they had done it they would have put on a gypsum brown coat and a Portland cement brown coat while they were in the bath, couldn't they? A. They could have, but they didn't.

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[326] Q. (By Mr. Capuano) Now, you said when a tile setter applies a float coat he can do it to finished dimensions, final dimensions, but you said when a plasterer puts on his final coat he doesn't know what the finished dimensions are going to be or his coat won't finish to the proper dimensions. Do you recall that? A. Yes.

Q. Now, I would like you to take a look at P-8, American Standard Specifications for installation of tile with dry-set mortars.

Look at page 13, Appendix A. A. I have 13.

Q. All right.

Look at Sub-Section A-3.1, Sub-Paragraph (e). See that? "Where tile to finish flush with plaster, apply brown coat behind tile of correct thickness to allow for tile and setting bed, so that tile and plaster finish will be flush."

Do you see that? A. Yes, I read it.

Q. Doesn't that say that the plasterer must put on his coat of mortar taking into consideration the finished line of the tile and to leave enough room for the tile contractor to put on the tile and the mortar bed, setting bed? [327] A. It so states, but that doesn't make it a fact.

Q. We are reading from the American Standard Specifications, aren't we? A. Yes.

Q. O.K. A. It says only that it will finish flush. That is only one dimension.

Q. To allow for tile and setting bed. A. Yes, to finish flush.

Q. So he has to know where the tile, what the finished dimensions of the room are going to be, doesn't he? A. The finished dimensions of the room? He may know the finished dimensions of the room.

Q. Wouldn't a plasterer putting on a coat of mortar on a wall, for example, that wall right there (indicating) where there is a door buck in it, he would have to know that your tile is only going to come, or your tile will finish a quarter of an inch recessed from the door buck when he is putting on his plaster or mortar so that he doesn't

put on two inches of mortar and bring you out an inch beyond the door buck, wouldn't he? A. You are asking—he should know that, and I agree, he should know that.

Q. That's right. All right. A. Yes, he should.

[328] Q. Look at P-7. That is American Standard Specifications for Portland cement mortars, tile installation. Look on page 27. A. I have it.

Q. Requirements to be included in Related Divisions, under Lathing and Plastering Division. Look at paragraph A-4.6. A. Yes.

Q. Doesn't that also provide that the plasterer should put on his leveling coat? A. Provides that it be scratched.

Q. Apply a leveling coat over scratch coat when necessary to meet requirements of A-4.5e or when a mortar thickness of more than three-quarters inch is required to build out to finish tile surface. Scratch and cure leveling coat. A. Right.

Q. That is also providing that he has to know where the finished tile surface is going to go, doesn't it? A. Yes, there is a provision. There is a provision.

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[331] Q. (By Miss Thacker) All right. Now, then, Mr. Bertolini, would you look on page 104 as to the decision rendered February 21, 1924? [332] A. I have it.

Q. And the second paragraph there, would you read that to the comma. A. The second paragraph or the first paragraph?

Q. The second paragraph, starting "Plasterers." A. "Plasterers shall prepare or plaster all walls and ceilings which are to receive tile."

Q. Now, would it be your interpretation that that would incorporate by reference, then, the August 22, 1917 agreement? A. Yes.

Q. That it would be adopting by incorporation everything that went into the original agreement, August 22 of 1917? A. I so believe.

Q. All right.

Now, then, let's go back to the 1917 agreement. In the first paragraph, but it begins with the word Second, then it says "All ceilings must be leveled and rodged and properly scratched." What does properly scratched mean to you? A. Scratched to a sufficient depth to guarantee the adhesiveness of the final coat. In other words, that would mean that although you might be able to scratch a level coat to many degrees, to be sure that you do get a good bond it must be firmly scratched, which would mean indentations of one-eighth to three-sixteenths of an inch deep.

Q. Now, then, we have already firmly established, then, [333] the incorporation of this initial agreement into the 1918 agreement and into the decision on February 21, 1924, is that correct, from your interpretation? A. I think the decision rendered in '24 specifically says so.

Q. So that then the scratching, properly scratched, which was the initial agreement between the two unions, then, is incorporated by reference into these two subsequent or the one subsequent agreement and the first decision. A. Yes.

Q. (By Miss Thacker) Then it says "the final coat which shall be put on by the tile layer to act as a bed for his tile."

And then we have in the next paragraph that begins Second, we have also, "the final coat which shall be applied by the tile setter and act as a bed for his tile."

Now, does this agreement, the terms of this agreement, tell us what the setting bed is to be made of? A. In 1917 ceramic tile was almost universally installed in a bed of Portland cement.

[334] Q. But does the agreement tell us or does the agreement specify what the setting bed is to be made of? A. Not specifically.

Q. Does the agreement tell us anything of the thickness of the setting bed? A. It does not.

[341] Q. In connection with the American Standard Specifications, are they widely accepted or uniformly accepted?

A. I would say yes.

Q. Are they uniformly accepted? A. No.

\* \* \* \* \*

A. It is not uniformly accepted.

Q. (By Miss Thacker) It is not uniformly accepted.

Now, how many methods of tile setting were known in 1917? [342] A. Basically one.

Q. What is that method? A. The conventional mortar method.

Q. Then would you assume that it was the conventional method to which the 1917 agreement was referring?

Mr. Capuano: I am going to object. What good is his assumption of something unless it's based upon some facts of some expertise knowledge?

Hearing Officer: Well, I think you will have a chance on cross to delve into this, if you wish, but I am going to permit him to answer.

Mr. Capuano: O.k.

A. There being no other method of installation, you must assume that it refers to the conventional mortar method.

Q. (By Miss Thacker) Do you know of any agreements subsequent to this 1917 agreement, and then the 1918 agreement, which does not have the day or the month entered in the green book, by and between the two unions, the B.M. & P.I.U., and the O.P. & C.M.I.A. A. I know of none.

Q. This American Standard Specifications is dated October 16, 1958. Is there a revision currently being made?

A. There is.

Mr. Capuano: Which one are we—excuse me, I thought you were referring—

[343] Q. (By Miss Thacker) I believe you stated that you were on the committee.

The Witness: P-7.

Mr. Capuano: P-7?

Q. (By Miss Thacker) I believe you stated— A. I am.

Q. And you have worked on the sections which have been referred to? A. I have.

Q. Are there revisions in them that differ from the way they are in the present form? A. They are being rewritten to take into consideration present methods in use by tile contractors throughout the United States.

Q. Now, does the thickness of the float coat or the setting bed vary? A. Yes.

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[351] Q. (By Miss Thacker) Mr. Bertolini, you have testified you have been in business, connected with this business since 1939? A. That is right.

Q. And you are familiar with the financial operation of it and the revenue connected therewith? A. Yes.

Q. Of your total operation in the bidding of your work how much comparatively entails or comprises or composes the float coat or the setting bed in your business operation? A. Well, last year I believe that we installed between thirty and thirty-three per cent of our tile in the conventional mortar method.

Q. What per cent in the one coat float coat? A. Hardly any. And the remainder would have been in the other two methods, or the other method, which would be the thin-set method.

Q. So then could we conclude, then, that if you did not have [352] the right to establish or to put in the float coat or the setting bed on this conventional method that you have had, that you would lose that, what portion of your business would that be? A. We would lose that portion of the thirty per cent which involve the installation of the final setting bed.

Q. Would that be a material part in the profit or loss of your business? A. I think it would be a definite problem in the loss of this part of our business since it generally involves the better quality jobs.



Q. The conventional method? A. Yes, yes. We are referring to the conventional method and because the elimination of this final setting bed would then, in my estimation, drop down the conventional mortar method jobs to an ordinary thin-set bed method, and that since these jobs generally involve quality installations, that they would then drop down in quality, probably loss of future specifications that would demand the quality of workmanship that I think can only be done when you install tile in the conventional mortar method and, of course, there would be the direct loss of that portion of the conventional method which would involve the final setting bed.

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[355] Redirect Examination

Q. (By Miss Thacker) Would you, Mr. Bertolini, be agreeable to continue putting on the float coat or the mortar setting bed if plasterers were to do the work? A. Probably not.

Q. Why? A. Because of the different methods employed between the tile setter and the plasterer in the installation of the final setting bed.

Q. You are saying the skill of the two crafts? A. I do not think the skill is equal.

Q. So then if you didn't care to have a collective bargaining agreement with the plasterers for that reason would you be able to give the same guarantee on your work if the plasterers put the bed in as if the tile setters put it in? A. Well, if the plasterers are working for me I would probably [356] have to give the same guarantee but, and I mention that I don't think that the plasterers and the tile setters have the same skill, I am specifically referring to only the installation of the final setting bed when I say the same skill.

Q. Yes, that is what my question was confined to. A. I don't want to be interpreted in the broad sense that there is an unequal skill.

Q. No, I limited it to the setting bed. So then if you do not feel that they have the same skills and you would prefer not to have a collective bargaining agreement with them, then you would not be apt to bid on those jobs which required a float coat or setting bed? A. I would not because the plasterer, if employed by me, would then be restricted to doing only one part of the work. I would use him for one day and then send him home. I wouldn't be able to use him to continue to set tile or in a bathroom he could only float the walls. Then when it came to the time of the installation of the tile he would be sent home. I would have to send another craft in his place.

When the time came to set the floors he wouldn't be able to do that. So I would have to hire a tile setter.

So this would be a very cumbersome method to install tile, even on a commercial job, when you would have to intermingle the trades under one, under the one contract.

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[369] Redirect Examination

Q. (By Miss Thacker) Is this the part that he had you read (indicating)? A. Yes.

Q. Would you read it again, please. A. "A three thirty-second inch thick layer of dry-set mortar has twice the bonding strength of one-inch thick conventional mortar bed."

Q. All right. This three thirty-second inch layer of dry-set, is this referring to the bonding agent or is it referring to the setting bed?

Mr. Capuano: I am going to object. I don't think there is any word in there about bonding agent.

Miss Thacker: I have asked him the question.

Mr. Capuano: Well, there is nothing in there. She says does it refer to this and there is nothing in there that says it's a bonding agent.

Hearing Officer: Well, he ought to be able to answer it, I guess. If he can't he can't.

A. Oh, I can answer it. I was waiting to see whether I could or should.

Hearing Officer: Well, go ahead.

A. In the tile contractor's terminology, it refers to the bond coat because in the conventional mortar method we have the bond coat of neat Portland cement, and dry-set mortar [370] in the use, in the instance, or I am sorry, in the substitution of dry-set mortar in place of the neat Portland cement bond coat you have twice the bond strength.

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[415] **Allen Colvin**

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

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[420] Q. (By Miss Thacker) Was there a picket established? A. Yes.

Q. And when did it go up? A. Well, we went to work at 8:00 o'clock, the men I had on the job, and approximately around 10:00 o'clock there was a picket put up on the job.

Q. And then what took place?

Hearing Officer: Well, first of all are we talking about the same day you had this conversation?

The Witness: Yes.

Hearing Officer. In other words, at 8:00 o'clock in the morning you had the conversation with Mr. Longshore and at 10:00 o'clock that same day a picket was established?

The Witness: That's right.

Hearing Officer: O.K.

The Witness: Well, immediately the people at Rainbo [421] Bakery called me and told me they could not have a picket on the job and jeopardize their bakery, so I immediately shut my job down in order to have the picket

withdrawn, to protect Rainbo Bakery from any embarrassment.

\* \* \* \* \*

Q. That is what I wanted to get to.

Now, then, Mr. Colvin, will you tell us exactly what this [422] job consisted of? A. This job consisted of floating Portland cement mortar over a brick wall for the installation of ceramic tile in part of the baking area. The job was such that there was one long wall which had to be floated, and I believe it was fifteen feet high. At the present time we only had enough material in stock to cover six foot of the height of that wall.

The people at Rainbo Bakery who we had our contract with stipulated that they wanted that material, for sanitary conditions, to go six feet high, but they wanted all the mud floated so as to get rid of the mess in the bakery for health reasons. And that is what we proceeded to do. We floated half of the wall all the way to the ceiling. We put our tile up six feet high, and we were going to work a Saturday when the bakery was shut down to install the rest of our float coat and our tile.

\* \* \* \* \*

[423] Q. Now, could you define the setting bed that you installed on this job?

Mr. Capuano: He has not once used the word setting bed here.

Hearing Officer: Right. I think the record ought to be clear. Establish first of all—are you talking about a float coat?

Miss Thacker: We use it interchangeably. It's been stipulated to that.

Mr. Capuano: It has not.

Miss Thacker: We have used float coat or setting bed, mortar setting bed.

Hearing Officer: That is the same thing?

Miss Thacker: It's in the charge.

The Witness: Floating coat and setting bed is one and the same thing.

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[424] Miss Thacker: Yes.

Would you, Mr. Eagleston, read him back the question, please?

(The pending question read by the reporter.)

A. The setting bed on this job was installed over brick where we plumbed our walls, rodded our walls to a true, smooth surface, in preparation for the setting of tile.

Q. (By Miss Thacker) How long have you been a tile setter, Mr. Colvin? A. Since '38.

Q. You have worked at the trade this entire time? A. Outside of a few years I was in the Army.

Q. Has there been any change, to your knowledge, in the setting bed or float coat during this period of time? A. It's the same thing as when I started.

Q. Is it to the advantage of the tile setter and the tile contractor to float the work first? A. Yes.

Q. Why? [425] A. Well, due to the fact that tile comes in different sizes and shapes, you almost have to have your tile on the job for your lay-out, for your sizes, and so on and so forth, like on ceilings and jambs and headers and soffits. Some of this work even has to be pre-floated because the humidity and the weight of the sizes of tile will not take in the same day that the preparation has been made.

Hearing Officer: May I ask him a question, what it means to float?

The Witness: To float, in our business, if we take, for instance, this wall, we set a wooden lattice strip up each end of this wall, plumb and square with the room, we take a hawk and trowel and float the Portland cement mortar in between these strips, a straight edge and rod it back to the strips to where you get a smooth surface to receive the tile.

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Q. (By Miss Thacker) This is T-8 for identification previously entered, dated March 15, 1967, clarification letter, with particular reference to page two, the second paragraph, where the Joint Board refers to the fact, or [426] rather makes the decision that the work that is set during the same work day in which such coat is applied the plaster materials shall be applied by tile setters in the interest of efficient job operation.

Is this feasible? A. No.

Q. Would you tell us why, Mr. Colvin? A. Well, like I said a while ago, humidity, sizes and weights of tile has a whole lot to do with it, and at the same time it jeopardizes our contractors to the extent that we are placed to do so much work, maybe we have to go home at 3:00 o'clock in the afternoon because we can't float no more work because we wouldn't have time to cover it up, or maybe we have got to stay there and charge the man for overtime to stay there until after working hours to cover it up. It's impossible to lay your work out from day to day to give your employer a full eight hours work and say that you can float only so much and that has got to be covered up.

Q. Would you tell us how you actually go about applying the float coat and what you must take into consideration in its application? A. Well, first in consideration of the application you have to take the size of the tile, you have to have the tile on the job. To lay out your tile work you have several different kinds of trim pieces. They have to be measured [427] where your jambs and different things of your tile will fit. Some specifications call for full tile, or so on, around door jambs and stuff of such nature.

Without this tile and every factory that puts out tile, there are different sizes, you can't just pick up one piece of tile and say this is it because if this tile for this particular job comes from another factory it may be an eighth of an inch bigger in size, and you have to lay this work out, and I know on most all jobs I go on I lay my tile out on the floor and lots of times make me a gauge stick and mark it

for my measurements of my room, and without that you just can't do a float job good enough to receive tile good.

Q. To your knowledge is the tile available on the job if a plasterer puts on this bed? A. No, it is not.

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[432] Q. Now, on this March '67 clarification you stated that the decision as rendered by the Board, did you not, that it was the recommendation that it was tile layer's work being what he could float and cover the same day, and you say this is not feasible. A. No, it is not.

Q. Why? What would happen? A. Well, first it's impossible to lay out your work to where you can give your employer a full eight hours work per day and still be limited to the time that you can go to work and do certain things and then turn around and cover it up—

Mr. Capuano: I am going to object. It sounds to me like it's repetitious of what he just told us.

Miss Thacker: Let him finish, please.

Hearing Officer: Let him go ahead.

Mr. Capuano: O.K.

Hearing Officer: Go ahead. Do you need to refresh your recollection where you were? Would you read—

A. Well, you have lots of instances on jobs where you have ceilings and arches and of such nature that has to be pre-floated. It's impossible to take a ceiling and float it and [433] put tile on it the same day that you float it out because the way we work with our tools, you float this out, although the material is hard, when you butter your tile and go to tapping it in smooth, it breaks the bond, and it won't stay there. It has to be set hard and firm where it will take the punishment of the installation of the tile work.

Q. (By Miss Thacker) What would happen if you would put quarry tile on a wet setting bed? A. It would sag, fall down. You see, your quarry tile, of course, what you call a wet setting bed, some setting beds are a lot wetter than others. It all depends on the time you give it to dry before you get started to work on it. But a quarry tile runs in

sizes up to fifteen by twenty inches and two inches thick, and when you hang that surface with the weight onto a wet setting bed it just won't hold it.

Q. Now, if you are using ceramic tile, and you apply it on a wet float coat, and then you begin to work with the tile, what happens? A. It moves. It gets out of line. It sags. And when the material does that you cannot straighten it up, you cannot make a uniform job. And through trying to get a smooth surface you break your bond and you just don't have a job.

Q. Now, where the plasterer puts on a skim or scratch coat and then the brown coat, is his final coat to be scratched? A. According to the 1917 agreement it's supposed to be [434] scratched. If you will read the article of agreement in the green book it will tell you.

Q. If his final coat, the plasterer's final coat, is not scratched, can you put on your setting bed, that is, if his coat is left smooth? A. Not and get a good bond.

Q. Why? A. Because the scratching of the surface is what, roughen it up, is what forms a good bond on your material. A slick surface, it dries out and it's slick, and it's easy to fall off.

Q. Are you aware of any requirement in the 1917 agreement that tells or specifies when the tile layer shall apply his final setting bed? A. There is nothing in the 1917 agreement that tells us when or how to set our final setting bed or the tile, either one.

Q. Is there anything in that agreement that you are aware of that says that the setting bed must be wet or dry at the time the tile setter applies his tile? A. It does not.

Q. Now, as to the bonding agent, itself, with the advent of the bonding agents currently in use, has there been any change, has this introduction of these agents brought about any technological changes?

\* \* \* \* \*



[435] Miss Thacker: Would you read back the question for him, please?

(The pending question read by the reporter.)

Hearing Officer: First of all, before you answer that maybe you better define for the Board, as well as myself or anybody else reading the record, what bonding agent is.

The Witness: A bonding agent is a material used to bond the two materials together.

Hearing Officer: O.K. Now, do you recall the question that the reporter read you?

The Witness: Yes, sir.

Hearing Officer: Would you answer it?

The Witness: Yes, there has been some changes to the extent that there's been a retarder put in the bonding agent whereas to allow you to work over hard surfaces or pre-floated [436] work that will not let your bonding agent dry out too fast. It cures on its own without any moisture taken out of it from the substance behind it or before it.

Q. (By Miss Thacker) Can the bonding agent in any sense be referred to or can it be considered a setting bed?

A. No, ma'am.

Q. Why? A. Well, a bonding agent is strictly just—it's a material to stick the two materials together and bond it. Now, floating is a material you use to straighten up your wall, to plumb your wall, to square your room. And your bonding agents cannot be put on a surface over an eighth of an inch because it will run down to the floor, and it's impossible to try to straighten up any irregular, well, any way to straighten up any defects in a wall or anything of that order.

Q. Are you saying, then, that you cannot set your true dimensions with the bonding agent? A. No, we cannot.

Q. Now, where you, the tile setter, puts in the setting bed or float coat, can you guarantee your work? A. We do guarantee our work where we do our own floating and installation of our tile.

Q. Where some other craft has put in a coat of mortar prior to the application which you do of the bonding agent and the tile, can you guarantee your work in the same quality? [437] A. No, ma'am.

Q. Why? A. Well, work that is being performed in that manner is always the walls are irregular, they are out of plumb, they are out of square. You have many defects in the walls that you cannot give a true, what we would call a satisfactory job.

Q. Could you tell us the actual process that you use to plumb a wall or surface after the plasterer has already rodded, squared and plumbed it? A. I don't know whether I understand the question.

Q. Well, I am assuming that some other craft, the plasterer, has put on a coat which is either his scratch coat or the brown coat, and according to the 1917 agreement it requires him to plumb, rod and square and scratch. Is this a preliminary or a final, so far as plumbing, rodding and squaring is concerned? A. No, because once he scratches the wall we are supposed to have approximately one inch to plumb and square and float our own wall to a true surface to receive our tile.

Q. So then you do additional work? A. Yes.

Q. Now, are there factors besides rodding, plumbing and squaring that you must keep in mind when you put on your float coat? A. Yes, you have to keep in mind your kinds of material you [438] are using for tile, the lay-out, dimensions and so forth.

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[440] Q. (By Miss Thacker) Now, Mr. Colvin, would you explain the [441] use of the screed and the purpose for it?

A. The screed we use to plumb on a wall for the purpose of rodding our straight edges over it that it won't dig into the mortar and leave a true surface.

Q. Now, in this particular job at Rainbo—

Hearing Officer: Excuse me just a second. Is this some kind of instrument that you use, a tool?

The Witness: The screed that we are speaking of in our business, we use a wooden strip. It's about an inch and a quarter by a quarter of an inch thick. We use these to plumb up a wall, then rod our float coat off of that.

Hearing Officer: O.K. You have got to remember, I am a novice or a layman at this terminology, and I would like to know, and so would the Board, I am sure, what each of these terms is.

I am sorry, go ahead.

Miss Thacker: That is all right.

Q. (By Miss Thacker) Now, Mr. Colvin, on this particular job at Rainbo, what dimensions did you have to work to? I mean by that how much room did you have? A. We were instructed by Rainbo to hold our walls as close as possible so that we wouldn't bring them out any further than absolutely necessary, to straighten them up.

Q. Was there room for a coat to be applied by the plasterer? A. No. There was no room for this coat because on this [442] particular wall Rainbo has conveyors where there are bread pans and things run up and down the wall that are sitting right practically on the wall, and we had to hold our material behind those conveyors to keep them from having a great cost of moving all their equipment out away from it.

Q. Now comparatively, I am speaking as to the time of the tile setter, what is the comparative time that it takes the tile setter to apply his float coat or mortar setting bed and the time that it takes him to put on the bonding agent and the tile? A. Well, a lot depends on what type of work. Ordinarily speaking, I would say sixty-five or seventy percent of your time is on your float coat, and the rest of that time would be for the installation of your tile work.

Q. Where does the real art of the craft rest? A. In the float coat.

Q. Did you come into the, come to be a tile setter through the apprentice program? A. Yes.

Q. How long did you spend, comparatively, in the program learning to apply the float coat? A. Three years.

Q. Out of a total of how much time for the total program? A. Our apprentice program is a three-year program, and we serve this whole three years.

[443] Q. But are you saying, my question was about how much of that time did it take you to learn to properly put in the float coat or setting bed? A. I would say fifty per cent.

Q. Fifty per cent.

\* \* \* \* \*

[451] Q. Now, at the time that the plasterer puts in his final coat of plaster material, does he have before him the dimensions that's necessary to be known to set the tile? A. He does not have the tile to lay out any dimensions.

Q. So then he doesn't know, or rather should I say this, does the plasterer in installing this final coat of plaster material, does he have available to him the specs. for the laying or setting of the tile? A. Not to my knowledge.

Q. Is it possible for him, the plasterer, to plumb, rod and square in a final form without the specs. and the final dimensions which are required for the tile installation? A. I would say no and the reason I would say no is because if he don't have the tile and the shapes of the tile he doesn't know what the dimension is or anything else to float to make our tile work to certain points in certain areas.

\* \* \* \* \*

[452] Cross Examination

\* \* \* \* \*

[454] Q. Now, were you following any specifications on that job or were you just putting the mortar up or how was it being done? A. The job was floated in the regular manner like we always—

Q. Well, I understand that. But were you given any written instructions or specifications on how to do it? A. No, sir, Mr. Stevenson of Rainbo Bakery, who we have our contract with, instructs us as to what he wants in the area he wants covered, and so forth.

Q. Who is Mr. Stevenson? A. He is the chief engineer and chief building construction [455] man for Rainbo.

Q. And he told you what he wanted covered? A. Right.

Q. Did he tell it to you? A. Yes, sir.

Q. And you told your men what to do. A. Right, sir.

Q. But you didn't receive any written specifications or instructions how to do this? A. No, sir.

Q. Let me show you what has been marked T-7 and ask you if you have ever seen that before? A. This particular item I have never seen, no, sir.

Q. Do you know what it purports to be? A. I believe I do, yes, sir.

Q. What does it purport to be? A. It's a system for us to install our tile.

Q. What is it entitled? A. Sir?

Q. What is it entitled? A. What is it entitled? It's entitled Specifications.

Q. For the Rainbo Baking Company job, isn't it? A. Right.

Q. You have never seen it before? A. No, sir.

[456] Q. You were the superintendent on the job? A. Right.

Q. Now, would you tell me again just what you had to do on that Rainbo job? What work were you doing? I am not talking about the particular task of putting up screeds. I want to know what work you as a representative of Martini or Martini Tile Company had to do on that job. A. On that particular job my job was to see that I got men on the job.

Q. No, that is not what I mean. I mean the actual work, you had to put tile on some walls, I understand. A. Right.

Q. All right.

Now, tell me where the walls were, the kind of tile you were putting on, and what else you had to do as part of Martini's job there. A. Well, first we put metal lath—

Q. No, no, tell me where you were putting this stuff. In other words, I am trying to get a picture of what Martini did in this bakery. Now, you have got a big room, I pre-

sume, with some baking machines. A. In the panning room.

Q. In the planning room? A. Pan, panning room.

Q. Panning room. That is where they bake bread, right?  
[457] A. Right.

Q. All right.

You had to do some work in the panning room. What work did Martini have to do there? A. Install some tile.

Q. Where? A. On the two outside walls in the panning room.

Q. All right. Now, how big were these walls, how long?  
A. I would say one of these was forty feet by fifteen and the other one was approximately sixty, sixty-five feet by fifteen.

Q. All right.

And Martini had to install tile on these two walls in the panning room. Now, I wasn't quite clear on what you said. The tile went up six feet? A. The tile went all the way to the ceiling, but at the time of the installation, which the job is there right now without it all the way up, we only had enough tile to go six feet on these walls. The other is on order, which will be installed when it arrives in the city.

Q. All right.

I think I have got the picture now. You had these two big walls, you tiled up six feet, but you put mortar above the six feet to the ceiling, which is about fifteen feet?  
[458] A. We floated it all the way to the ceiling.

Q. All right. You call it floated. And you are going back at some later time and going to put the tile from six feet up to the fifteen foot ceiling when the tile comes in, is that what you are saying? A. That's right.

Q. All right.

Now, was this glazed ceramic tile? A. It was four and a quarter by eight and half glazed ceramic tile.

Q. Four and a quarter by eight and a half? A. Right.

Q. O.K.

One piece, you mean, four and a quarter by eight and a half? A. Right.

Q. O.K.

Now, when you go back, when you go back to put up the rest of the tile, the walls you have got there will be as dry as the wall right in this hearing room, walls in this hearing room, won't they? A. They will be dry, yes, sir.

Q. All right.

Now, tell me how you will go about putting on the remainder of the tile above the six feet when you go back. [459] A. Our bonding agents that we have today has a retarder. The wall above what we installed will be installed exactly the same as the six foot already on there.

Q. Now, I will ask you again. How will you go about putting the tile from the six foot up to the ceiling? What will you use? A. We use L. & M.

Q. L. & M.? A. Concentrate, Portland cement.

Q. All right. You say concentrate. You mean you will put that concentrate in something else or will you use it just as it comes, or what? A. The concentrate is, in itself, is a retarder that we put in the Portland cement which we use as a bonding agent.

Q. You mean you will take a bag of Portland cement and you will add something to it? A. Right, the retarder.

Q. You will take this L. & M. concentrate? A. Right.

Q. Add it to your bag of Portland cement, mix it with water? A. Right.

Q. And then you will put it on your wall with a notched trowel, huh? A. Right.

[460] Q. That is the wall above the six foot. A. Right.

Q. And then you will put your tile right in that, is that the way you will do it? A. That's right.

\* \* \* \* \*

Q. If you wanted, if you found a little place there that wasn't quite level, you could add some sand to it, use it as a leveler, couldn't you? A. Not to use as a leveler, no, sir.

Q. You couldn't use that as a leveler with a little sand in it? A. No, sir, you cannot.

Q. All right. How long have you been using L. & M.? A. Since it came out. I believe in the 1950's sometime, '55, '56. This material can't be used as a leveler. In the first place it sticks to a straight edge. You cannot rod it and make a smooth surface. In the second place, if you put it on too heavy, it runs down the wall.

Q. All right.

Are you aware that L. & M. takes a contrary position from you and says with some sand in it it can be used as a leveler? [461] A. I have read some of their specifications.

Q. But you say what they say isn't right? A. I do for a fact because I have tried it.

Q. O.K. And L. & M. was made or developed right in this area, wasn't it? A. I believe in Waco, Texas.

Q. By Mr. Montgomery? A. Yes.

Q. And Mr. Love. A. Right.

Q. That is where it got its name, wasn't it? A. Right.

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[463] Q. Do you know if the Tile Contractors of America have ever taken a position that dry-set mortar such as L.&M. can be used for leveling and clearing up irregularities in the walls that you are going to put tile over? A. Well, we are speaking in a broad sense. It all depends on what you mean by leveling, and so on and so forth. I am saying this, you cannot take L.&M. and put it on a wall three-eighths to a half inch thick to level or plumb something with.

Q. Oh, now you are talking about three-eighths or a half inch. I don't recall that I said that in my question, did I? A. No, you didn't.

Q. But that is what you meant, you can't use L.&M. like you would use a thick setting bed, is that what you are saying? A. No, you can't.

Q. All right.



But are you agreeing with me now that it can be used to [464] level minor irregularities in a wall? A. That depends on how minor.

Q. How about three thirty-seconds of an inch? A. I would say yes.

Q. It can be. All right.

Now, would you say the bonding strength of three thirty-seconds of an inch of L.&M. is comparable to about an inch of conventional mortar bed? A. I would. I would say it might be even greater.

Q. It might be greater. A. That's right.

Q. That means it's going to hold the tile on the wall better than that thick mortar bed would, wouldn't it? A. The thick mortar bed won't hold tile on the wall.

Q. The thick mortar bed won't hold tile on the wall, itself? A. No, sir.

Q. All right.

There is going to be a greater bond between the tile and the mortar with this L.&M. than there would be if you are putting it in a thick bed, correct? A. Well, I don't know as I understand what you are talking about, trying to get to.

Q. All right, let me change it for you again.

Let me ask you something else. We will come back to that. Did you use a lather from the very beginning of that [465] job? A. Use a what?

Q. Lather. A. Lather?

Q. Yes. You said you used a lather for two hours and then they struck and then you used a tile setter, but you didn't tell us who was doing the work from the very beginning, putting up the metal lath. A. We started it.

Q. Who is we? A. The tile setters I had on the job.

Q. Oh. Then you switched to a lather? A. Right.

Q. Now, what sort of lath are you using here? A. Metal lath.

Q. What does that look like? Is that the same as the expanded metal lath? We had some testimony about that.

A. No, you might interpret it that way, but I wouldn't say it was expanded metal lath.

Q. What was it, then? A. I wouldn't know how to explain it.

Q. What did it look like? Did it look like chicken wire? A. No, it's a lath with little, small quarter-inch holes in it.

Q. You mean it's pieces of metal with quarter-inch holes [466] in it? A. Right.

Q. And you nailed it right to this brick wall? A. Right.

Q. Now, you said you put your mortar on the wall. How much mortar did you put on the wall in this mortar coat? A. I would say an average of a half inch.

Q. A half inch. And you said you plumbed and you rodded the wall, correct? A. Right.

Q. And then did you set your tile the same day or did you come back the next day or several days later and set your tile? A. We set some of it that day. We set some of it the next day. Fact of the business, we set some of it a week afterward.

\* \* \* \* \*  
[467] Q. All right.

Now, I am going to show you Plasterers' Exhibit 11, which purports to be a booklet put out by the L.&M. Company on thin-set methods. Now, this is the same company that produces the concentrate that you use, isn't it? A. Yes.

Q. I am going to ask you to look at page six, Section III, Installation. I have it marked here.

Do you see that, where it says A, "Setting bed to receive tile"? A. Yes, sir.

Q. See the section? A. Yes, sir.

Q. Would you read that to yourself? A. (Witness complied.)

Q. Now, the setting bed to receive tile that they are talking about there is the L.&M. that you used, isn't it? A. No, sir.

[468] Q. It isn't? What is the difference between what you used and what is listed there? A. The setting bed to receive tile.

Q. Isn't it true that L.&M. calls its product which you used a setting bed and you call it a bonding agent? A. They call it a setting bed, they call it thin-set.

Q. I am asking you what L.&M. calls it in Plasterers' Exhibit 11, on page six, Section III. A. Well, it says setting bed to receive tile, mortar to be mixed thoroughly and applied in strict accordance with manufacturer's recommendations. Minimum thickness of setting bed to be three thirty-seconds to one-eighth maximum.

Q. That's right. And they are talking about the same material that you are going to float on that wall with your notched trowel and put your tile to above the six-foot level when it comes in, aren't they? A. That is what they have reference to.

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[475] Q. All right.

Let's take the normal practice. When you put your final setting bed on, isn't the recommended procedure, talking about the conventional method, to apply your tile the same day that you put that setting bed on? A. A bathroom wall we tried to put it up the same day, yes.

Q. That is the recommended way, isn't it, in a conventional method? A. I don't believe it says anything in this book anywhere that it recommends that we put up our tile the same day we float it.

Q. Did I ask you any questions about that book? A. No, sir. You asked me if it was recommended.

Q. That's right. A. Well, I don't know anywhere where it says it is recommended.

Q. Let me show you a place. You have heard of the American Standard Specifications, haven't you? You have seen specifications for the installation of tile, which is P-8? A. I have.

Q. I am sorry, P-7.

I am going to show you P-8, page eight. It's under American Standard Specifications for Glazed Ceramic Wall Tile [476] Installed in Portland Cement Mortars, Section 1-2, Walls, 1-2.3, under the Workmanship and Application. Look over 1-2.5d. Read that to yourself. Just d. A. (Witness Complied.)

Q. Did you read it? A. Yes, sir.

Q. And you say that is not a recommendation that you are not supposed to put tile, glazed ceramic wall tile, on a mortar bed that isn't still plastic? A. Back in the time when this was written we tried to cover our mortar beds when they were still wet.

Q. How long ago do you think this was written? A. I don't know.

Q. 1958.

\* \* \* \* \*

Q. (By Mr. Capuano) In the conventional method, isn't that [477] correct, what I just said, the recommended procedure is to install it the same day while it's still plastic? A. If possible.

Q. Is it or isn't it the recommended procedure? A. Yes.

\* \* \* \* \*

Q. (By Mr. Capuano) Did I understand your testimony that on page two, paragraph 2 of the Joint Board's award, that you said it was not feasible to apply tile to walls the same day that the float coat is applied, as the Joint Board says in there? A. Yes, sir.

Q. Didn't you just finish telling me that in the conventional method the recommended procedure was to apply tile the same day that you put the mortar coat on the wall? A. Yes, sir.

Q. But still you say it's not feasible to do that very procedure? A. Well, we are talking about two different things here.

[478] Q. No, we aren't. We are talking about applying tile the same day that you apply the mortar coat. A. You

can apply the tile even the same day as you apply the mortar coat.

Q. The way the Joint Board said you could, can't you?

A. It can be done.

Q. All right. A. Some circumstances this can't be done.

• • • • •  
[479] Q. Now, you said that there are certain advantages of floating a wall out first, as I recall. Now, when you are using these thin-set mortars like L.&M., Crest, Laticrete, you don't have to soak your tile, do you? A. No.

Q. The conventional method you had to soak your tile before [480] you put it in, right? A. We soaked it, yes.

Q. That is a big advantage, isn't it? A. Yes, but today the conventional method the tile doesn't have to be soaked.

Q. Now, will you let me ask the questions and you give me the answers? A. Well, maybe I misinterpreted you. You asked me if the conventional method, whether we had to soak our tile or not.

Q. And you said yes. A. Well, today the conventional method if you talk about putting it up over wet mortar, we don't have to soak it.

Q. If you use one of the thin setting bed materials, correct? A. If we use L.&M. or Kaiser, Crest.

Q. That's right. A. Right.

Q. O.K. I think we are in agreement.

You say it's impossible to lay work out day to day, give your employer a full day's work. I believe that was your testimony, wasn't it? A. That's right.

• • • • •  
[485] Q. (By Mr. Capuano) Now, Mr. Witness, you say unless you put on the float coat, as you call it, that you can't do a good job with your tile, that you measure out your tile and you do this apparently when you are putting on your float coat. Is that what you were trying to say? A. I believe when we float our work we lay out our tile.

Q. All right.

So in other words, if you got this wall over here, you would lay out your tile so that maybe you would get a half [486] a tile at the door buck, something like that, is that what you are telling me? A. That and the height.

Q. And the height. All right.

Now, supposing we had a sheetrock wall over there or dry wall, do you know what I mean by sheetrock? The reporter can't get your nod. A. Yes, sir.

Q. And you had the same door bucks in there. Now, when you were going to put tile on the sheetrock you would use some sort of thin setting bed material, either an organic or an inorganic compound, wouldn't you? A. You have to use some kind of a bonding agent to make it adhere to the wall.

Q. All right.

We would use something like L.&M. or Crest or one of these products, right? A. Right.

Q. All right.

Now, wouldn't you also lay out your tile so that you wouldn't wind up at the door buck with only a third of a tile? A. Yes, sir.

Q. You would lay it out the same way, wouldn't you? You would measure that wall so you wouldn't wind up with a little [487] bit of a tile at the top or a little bit of a tile at the door buck, right? A. I would.

Q. You would try to get, maybe, take it up in the joints, spread your joints a little bit, or pull them together, or something like that, wouldn't you, joints in the tile? A. I would try to center the wall and work from both ways.

• • • • •

Q. All right.

[488] Let me ask you this, supposing the specifications said that tile is to be installed in the setting bed which is to be three-eighths of an inch thick, a half inch thick, while the setting bed is still plastic. What would that mean to

you? A. That means just what it says, while it was still plastic.

Q. Would it be plastic a week later? A. No, sir.

Q. It would be plastic the same day, wouldn't it? A. Yes, sir.

Q. And you should put the tile in the same day, right? A. Yes, sir.

Q. According to you that is not feasible, is that correct?

A. Not in all cases.

Q. Oh, not in all cases.

So in other words, your opinion regarding T-8, the Joint Board award, is actually that there are cases it isn't feasible to install tile the same day; is that what your testimony amounts to? A. There's jobs you can't install the same day.

Q. But it doesn't apply to all jobs, by any means, does it? A. No.

Q. And that same answer would be equally true as far as arranging your work, there may be some jobs where you can't set the tile the same day but there are jobs where you can set [489] it the same day and arrange your work so that you can do it, aren't there? A. Yes, there's jobs where you can put tile over a wet mortar. You could do it every day.

\* \* \* \* \*

[491] Q. Well, let's take an average day, as I say, about seventy, seventy-five degrees, normal humidity. You are doing bathrooms in an office building. I am trying to find out approximately how many hours would it take for that wall to cure, as you put it, so that you could start setting tile? [492] A. In a conventional method I can't give you no definite answer, but as a general rule we float on a room or a wall until noon or a little after, and then where we started in the morning we go back to that area—

Q. And start setting your tile? A. —and start setting our tile, providing, as I say, it has cured enough to receive it.

• • • • •

[494] Q. Well, I am using the example that you gave me, that this is what you would normally do, float out in the morning, put the tile on in the afternoon. In your example the tile would not normally fall off the wall, would it? A. That's right.

• • • • •

[497] Q. Thank you.

Now, you told us, I believe, that in the 1917 agreement back on page 32 that the plasterer must scratch his brown coat but there are no restrictions whatsoever on the tile layer as to when or how or in what manner he puts on the setting bed, isn't that what you said? A. I believe so.

Q. Now, why did you say that this agreement requires the plasterer to always scratch his brown or plumb coat? A. Well, it says right here, if I am allowed to read—

Q. You certainly are. A. —they shall plumb, rod, square all walls and scratch the same so as to guarantee adhesion to the final coat which shall be put on by the tile layer to act as a bed for his tile.

Q. In other words, because it's listed there you say it must be done every time, is that your position? A. If it's not done we don't properly get a bond between the two.

Q. Supposing you had a situation where the tile layer did not want the brown coat scratched because he was going to use [498] L.&M. to put his tile up. Are you saying that he would have to, the plasterer would have to scratch the brown coat? A. Not if he is going to receive tile on it.

Q. You mean if they are going to use L.&M.? A. If you are going to put tile on a coat that they float and



use a bonding agent to stick the tile to it, we definitely cannot have it scratched.

Q. So you wouldn't want it scratched in that situation?

A. Not where we are going to put tile on it.

Q. All right.

So then he doesn't have to scratch every brown or plumb coat he puts up, does he? A. I guess he does not.

\* \* \* \* \*

Q. Let's take an example. Supposing there was concrete block on that wall, and you are going to put tile over it with L&M. concentrate or, you know, you are going to mix your concentrate and your Portland cement mortar, or you are going to use it pre-mixed. What would be the setting bed over there? A. The setting bed, there wouldn't be any setting bed. The brick, itself, is the setting bed.

Q. The brick, itself. Do the tile layers claim the brick? A. No, sir.

[499] Q. Or if it was concrete block they wouldn't claim that either, would they? A. No, sir.

\* \* \* \* \*

[501] Well, then that is who I am referring to, the Martini Tile Company. If the plasterers had put the float coat on the Rainbo Bakery job you would still be responsible for your work, the tile work, the work you did, generally for a year, isn't that correct? A. Mr. Martini would be, yes, sir.

Q. Right.

And if you would put the tile directly over a concrete block wall, if you could have in that situation, you would [502] still have been responsible for the tile work that Martini did, right? A. That's right.

Q. You wouldn't claim responsibility for whether the bricklayers had put up the concrete wall properly, would you? A. No, sir.

Q. Now, if Martini had gone into or started to go into brick work and if his own forces put up the concrete

brick wall, then Martini would probably have to guarantee the brick wall, too, wouldn't he? A. I guess so, if he was in that business.

Q. In other words, he is only going to guarantee whatever he does, correct? A. That's right.

Q. You said you had some equipment along the walls there that you had to work— A. Yes, sir.

Q. —in between or something? A. Conveyors.

Q. Conveyors.

Were they actually attached to the wall or— A. They were right against the wall.

Q. Right against the wall.

So what did you do, run your tile up to them and then start on top of them, or something? [503] A. Yes, sir.

\* \* \* \* \*

[504] Q. Now, isn't it a fact that when you generally get in a room you have, say a bathroom in an office building, you have certain dimensions that you must meet, right? A. From corner to corner on a straight wall the dimensions are approximate.

Q. Well, isn't it true that you will have things like plumbing fixtures, shower heads, faucets, that you have to meet them, you can't put two inches of mortar on the wall and cover up the plumbing fixtures or come out beyond the pipe or the plumbing fixtures. A. No, sir.

Q. So you have to hold back enough so that they have the right extension beyond your tile, right? A. On most plumbing fixtures you have a certain amount of tolerance, and if you lay your tile out you can build your wall out a little more or a little less to make it work better with the tile.

Q. But you just can't disregard all these other crafts in the room and lay out your tile to get it the way you want [505] it, can you? A. No, sir.

Q. Supposing you have got a wall, a four-inch wall with a six-inch door buck, and you are going to put tile on both sides of the wall. You know what I mean by door buck, don't you? A. Yes, sir.

Q. A door frame, right? That only leaves you one inch on either side of the door, doesn't it, either side of the wall, doesn't it? A. Four-inch partition?

Q. Yes. A. Yes.

Q. So you can't put on an inch and a half of mortar just because you want to build out your wall to make your tile fit better, you have to put your mortar out on your wall so you would come no more than flush with the door buck, generally, correct? A. That's right, if you have got one inch you couldn't put no more than five-eighths of mortar on the wall.

Q. All right. Fine.

You have to meet the door buck, right? A. Of course, this governs, too, according to the thickness of the tile you are using.

Q. That's right. And generally the door bucks will be [506] installed before you start putting your tile up, won't they? A. Yes, sir.

\* \* \* \* \*

[507] Q. Now, when you were foreman on jobs for Martini isn't it a fact that the plastering foreman, if he were putting up the back-up for the tile, would confer with you on how you wanted your work, how you wanted the back-up installed, what type of tile you were going to use? A. No, sir, because most cases it's already up.

Q. So you are telling me that you have never had a plastering foreman on the job confer with you whether you had any special requirements for the back-up to the tile? A. I have had talks with plastering foremen as to the requirements of what we had to have, yes, sir, but most of their work is already done when we come on the job.

\* \* \* \* \*

[514] Do you know of any jobs in town right now where tile is being applied directly to block walls? A. Myself, no, sir.

Q. You don't.

Have you applied it directly to block walls? A. Yes, sir.

Q. Do you find your architects are calling for that more and more? A. It's being done quite often, yes, sir.

Q. Would you agree with me that it's a fair statement that since 1957 the dry-set mortars, thin-set method, thin-set materials, have allowed tile contractors and architects to use [515] tile in areas where previous to that time tile may not have been used because of its cost? A. I believe that there's lots of cases they put tile where ordinarily they wouldn't have.

\* \* \* \* \*

Q. Do the helpers actually install the tiles? A. No, sir.

Q. I mean, put the tiles on the wall. A. No, sir.

Q. Why don't you let the helpers put the tiles on the wall? A. Because that is our job, that is what we are getting paid for.

[516] Q. Well, can they do it? A. I don't believe they could properly.

Q. Why not? A. Satisfactorily. They don't have the skill.

Q. What skill is there is putting the tile on the wall? A. Well, I don't know, I served three years learning how to do it.

Q. I am talking about the actual putting the tile on the wall now. A. It's skill in leveling up your base coat and running your joints square and straight.

Q. You mean the joints of the tile? A. Yes, sir. See that the surface of the tile is smooth.

Q. What else? A. Just anything that pertains to tile work, giving a satisfactory job for the owner or the people that's paying for it.

Q. So then the whole art of it isn't just in the float coat, is it? A. The float coat is the most important step in tile work.

Q. When you are putting— A. It's the foundation for it.

Q. When you are putting tile on that sheetrock wall you have to keep the joints of your tile nice and straight and your base nice and straight, don't you? [517] A. We try our best.

Q. Well, there is no— A. We have to follow whatever is there.

Q. Of course, but as far as the joints of your tile you certainly try to keep those straight, don't you, just like you would if you would put on the float coat? A. We do our best.

\* \* \* \* \*

[527] Miss Thacker: I am trying to ask where the float coat or setting bed exists.

Hearing Officer: That is a good question.

Q. (By Miss Thacker) We have established that it exists in the conventional method, have we not?

Mr. Capuano: Well—

A. Yes.

Q. (By Miss Thacker) All right. The coat of mortar that is put in in the one coat float coat method is a setting bed or a float coat, is it not? A. Yes.

Q. All right.

In the thin-set method, the tile setter applies the bonding agent and the tile. Can it be construed as a float coat or setting bed? A. Not in our line of work. The thin-set material we use is strictly a bonding agent.

[528] Q. A bonding agent? A. And cannot be used as to float a wall or anything in that manner.

Q. All right.

Now, I want to ask you about the Rainbo job. Hasn't there been considerable work done on that job? A. We have been working on that job for years.

Q. So that it is a, this particular job that you did on March 17 on which the picket went up was a part of a continuing job, is that correct? A. I believe that Rainbo Bakery had already bought the tile for that particular area that had gone up.

Q. So was this a repair job? A. No. When I say no as to a repair job, it could be in a sense maybe a repair job because they took out outside windows, they bricked these windows, they plastered them on the outside and tlied them on the inside. Now, you could say that was repair work. As far as the bakery is concerned I presume that it's repairing and so on.

Q. Would you consider it an alteration job, then? A. I would consider it alteration on the part of the bakery, yes.

Q. Is it usual in that type of work to have the same sort of specifications that you have on a new job? A. No, because on that particular job we are working under [529] the direction of the Rainbo Bakery, like I told my men and I have been instructed, to do whatever they want you to do.

Q. You mean as a part of a continuing agreement? A. That's right. If they want, they decide they want tile on this other wall, put tile on that other wall. If they want to add onto this floor, put it wherever they want it.

Q. Now, then, one other question I want to ask you about the float coat or setting bed. What is the normal thickness of it? A. It will vary from—it depends on what is behind it, but the normal thickness, I would say, would be from a half to five-eighths of an inch.

Q. And isn't it also true that there may be a variation throughout the surface, that it will not be all five-eighths or all three-eighths? A. Some of it may be an eighth of an inch clear up to three-quarters of an inch. It always depends on what you are working over, how straight the surface is behind what you are working over.

Q. What is the normal thickness fo the bonding agent when applied? A. Anything up to an eighth of an inch. That, too, depends on the sizes of tile. The smaller tile you use the less thickness you use. The larger tile you use, you put it on up [530] to an eighth of an inch thick to insure a better bond.

\* \* \* \* \*

## [544] Recross Examination

\* \* \* \* \*

[545] Q. Now, when you use various materials do you follow the manufacturer's recommended instructions how to use it? A. I do to the best of my ability and know-how. Also I follow the architect's specifications.

Q. Would you look at T-4, please, going to the 1917 [546] agreement?

On redirect yesterday you said that the 1917 agreement doesn't tell the tile layers how thick his setting bed should be or must be. Is that correct? A. I can't see in here where it says, specifically how thick it's to be.

Q. So that means it could be as thin or as thick as you wanted it, then. A. I gather that.

Q. You could have it as thin as an eighth of an inch, then, couldn't you, under the agreement? A. Yes, sir.

\* \* \* \* \*

[547] Q. And you didn't know you had to go all the way up to the ceiling? A. I knew we had to go, but I also knew we didn't have the tile to go all the way.

Q. Well, that was just what I asked you. You knew you were going to later put tile on it— A. Right.

Q. —but you didn't have it there to do it immediately, is that right? A. I believe that's right, yes, sir. I think I answered that one question.

Q. Now, when you say float out a wall what does the word float mean? I am not talking about a coat. I mean when you use it as a verb and you say "I floated out the wall," what do you mean by float? A. Applying the Portland cement that it takes to straighten and plumb a wall.

Q. Well, you mean putting the mortar on the wall, right? A. Right.

Q. Spreading it on the wall? A. Right.

Q. That is what you mean by float, right? A. Right.

\* \* \* \* \*

[548] Q. Yes, I would say that is what I am talking about.

Now, when you testified yesterday on redirect you were asked a question about one float coat being your setting bed. Do you consider that the job you did was something called a one float coat out here, the one float coat method out here at Rainbo Bakery? A. Yes, sir, it was, it was applied with one coat.

\* \* \* \* \*

[549] Q. All right.

Now, when you spread your L.&M. on this dry mortar bed, this wall at the Rainbo Bakery, you are supposed to cover the L.&M. before it gets a film over it, isn't that correct? A. That's right. Otherwise you get no bond.

Q. Otherwise you get no bond? A. Right.

Q. So wouldn't you agree with me, then, that you have to only put on as much L.&M. as you think you can cover before it gets the film, correct? A. That's right, yes, sir.

Q. Now, when you start a job, say a ten-story office building, you can know before you go on the job whether you are going to send your men in, put the mortar coat on the wall throughout the building or as much of the building as is completed, [550] and then come back and start your tile later, can't you? A. Yes, sir.

Q. Do you ever do that, float out two or three floors and then come back and start laying tile? A. Yes, sir, maybe not two or three floors, maybe one floor.

Q. As much as you can get done? A. That's right.

\* \* \* \* \*

#### Redirect Examination

\* \* \* \* \*

[551] Q. No difference. Now, how thick is your setting bed normally? A. A setting bed normally depends on the size and type of tile that you are using.

Q. What would be the minimum? A. Approximately a half inch for a setting bed or a float coat.



Q. Could it be an eighth of an inch? A. It could be. In some places it is. It depends on the trueness of the wall, the surface, that you are installing it on. The wall may be out of plumb a half an inch. You have [552] got to skim it tight in the bottom, plumb it out at top. Well, naturally if you are tight there you have more up there.

\* \* \* \* \*

**Adolph N. Martini**

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

Direct Examination

\* \* \* \* \*

[553] Q. Are you a member of the Tile, Terrazzo and Marble Contractors of Houston? A. Yes.

Q. Are you a member of the Tile Contractors Association of America, Incorporated? A. Yes.

Q. Are you bound by the National Joint Board in your contract with the general contractor in any of your agreements? A. No.

Q. Are you bound by the National Joint Board in your association with the Tile Contractors of America? A. No.

\* \* \* \* \*

[554] Q. Do you have a collective bargaining agreement with the B.M.&P.I.U., Local 20 and Local 108, the Helpers? A. Yes.

Miss Thacker: Would you mark this for identification, please?

(The document above-referred to was marked Texas State's Exhibit No. 13 for identification.)

Mr. Capuano: What is this, T-13?

Hearing Officer: Right.

Q. (By Miss Thacker) What is this, Mr. Martini? A. That is the agreement by and between the Tile, Terrazzo

and Marble Contractors of Houston, Texas, and the Bricklayers, Masons and Plasterers International Union of America, Local Union 20 of Houston, Texas, representing tile setters, terrazzo workers and marble setters.

\* \* \* \* \*

[556] Q. What per cent of your total work is done where you install the mortar setting bed using tile setters? A. Oh, I would say possibly around thirty per cent.

Q. Then in case the tile setters should lose the float coat would you lose thirty per cent of your business? A. Yes, I would say so.

\* \* \* \* \*

[563] Q. (By Miss Thacker) Now, Mr. Martini, are you familiar with the setting bed or the float coat to receive tile? A. Yes.

Q. How thick is the setting bed or float coat, generally? A. Oh, it's on an average of a half inch thick. It can be more or less.

Q. How thick—well, let's see, you are familiar with the bonding agents which are applied to the float coat or setting bed for the tile laying. A. Yes.

Q. How thick is the bonding agent, generally? A. It's generally about an eighth of an inch.

Q. Has the introduction of the bonding agents brought about technological changes in tile setting? A. Oh, yes.

Q. What are some of these? A. Well, it's enabled us to install tile in areas that we didn't install it before, such as on sheetrock and different [564] materials of that sort, concrete blocks, that we can apply direct to the block or the sheetrock.

Q. Has it had any significant change in the process of tile laying, itself? A. Well, I will say it has in this manner, that when you work against a sheetrock wall or a concrete block wall, or wall prepared by others, you have to work to the surfaces that they give you to work on, and sometimes these surfaces are not always accurate, true, plumb or straight, but if it's generally accepted by the owner or

architect, we call their attention to it, they will permit us to put our material upon those walls by the thin-set method, and we always try to clear it with them first so we won't have to tear it out.

Q. Now, have you ever employed lathers or plasterers and had them on your payroll? A. Yes, we have on occasion.

Q. Have you ever had a plasterer to put in your float coat or setting bed without direct supervision of a tile setter? A. No, I haven't.

Q. Have you seen plasterers work on installing the coat of plaster which is specified to be their work under the 1917 agreement? A. Let's see, I believe under the 1917 agreement it calls for a scratch and brown coat and we have installed out work over their scratch and brown in the conventional method.

[565] Q. Have you watched plasterers actually work at their craft? A. Oh, yes.

Q. Frequently? A. Well, of course, when I was working on the job I used to see them quite often, I was with them every day, practically.

Q. In your opinion do they have the requisite, by they I mean the plasterers, have the requisite skills to install a setting bed or float coat? A. Very few of them do.

Q. Could you guarantee your work as a tile contractor if the plasterer puts in the setting bed or float coat? A. No, I wouldn't, unless that float coat is absolutely perfect.

Q. Now, if you were forced to hire plasterers to put in your float coat or setting bed would it have any effect on your contract with the tile setters and tile helpers? A. Yes, it would.

Q. What effect would that be? A. Well, it would be contrary to our agreement.

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[567] Q. Now, are there any particular advantages in the one coat float coat method over the conventional method? A. Well, your one coat float coat method is actually the

same as your conventional method when you take the, when you start from the surface out, whether it's a scratch and brown coat behind it or remodeling job. Actually the one float coat method is more practical on remodeling work.

Q. Is it cheaper? A. Yes.

Q. Why? A. Because you can cover more ground with a one coat where you can float our setting bed out, like one day, and install the tile the next day.

\* \* \* \* \*

[568] Q. What is T-14? A. T-14 is the Plasterers Local No. 79, that is the agreement between the Contractors Lathing and Plastering Association of Houston, Texas and O.P.C.M.I.A. of Houston, Texas, Local No. 79.

Q. What is the rate of the plasterer foreman, hourly rate, effective July 1, '66? A. It will be \$4.77 one-half.

Q. What is the hourly rate of the plasterer journeyman from July 1, '66? A. \$4.52 one-half.

\* \* \* \* \*

[571] Q. Do you have a preference of work assignment to any one craft for the installation of the float coat or setting bed? A. Yes.

Q. Could you give me some reasons, please? A. Well, I prefer tile setters to do it because it's their work. I mean, they are more qualified and have been trained to do that specific type of work.

Q. Do you consider, in your opinion, is their skill superior to any other craft? A. Yes, in installing their own work, I say yes, in tile work.

Q. Would it make any difference to you economically if there are more than one craft on a job installation? A. Oh, it definitely would.

Q. Do you have or would you have better control of the [572] quality of the work over a craft with whom you have a collective bargaining agreement than one with whom you do not have? A. Yes.

Q. Would you tell us exactly what the job was that you did at Rainbo Baking which was picketed by Plasterers

Local 79? A. Yes, that is a remodel job and Rainbo Baking people elected to install some tile wainscot on their walls, I mean, tile walls in their baking room there. And we had to take, we had to install our work on some painted brick out there that was in place, and rather than to chop the paint off we elected to put metal lath on the brick work and nail it up there with concrete nails and install our setting bed and then install our tile on that with a bond coat.

Q. Now, are you familiar with various advertisements for manufacturers of bonding agents? A. Yes.

Q. In these advertisements they sometimes refer to their product as a "bed". In the tile industry can the application of the bonding agent in any way be considered a setting bed as you have thought of it historically or traditionally? A. Well, I wouldn't consider it a setting bed. Now, some of the manufacturers do call it a setting bed. That is just their terminology in their advertisements. I can't speak for them, as I would consider it strictly a bond coat.

\* \* \* \* \*

[575] Cross Examination

\* \* \* \* \*

[579] Q. (By Mr. Capuano) Now, Mr. Martini, you say you have been in business since 1934? A. That's right.

Q. And you were a tile setter for how long prior to that? A. Let's see, '24, I served three years apprenticeship, so about seven years as a tile setter.

Q. Seven years as a tile setter going back to 1927? A. '27, I think, is when I got my card because I started working in the business in 1924.

Q. O.K. [580] A. And I worked as a helper and then an apprentice, worked my way up.

Q. All right, sir.

So you have got approximately forty years in the business, then, haven't you? A. That's right.

Q. Now, you said you were a member of the Texas Terrazzo and Tile Contractors of Houston. Is that the name of it or is it the Tile and Terrazzo Contractors? What is the name? A. No, it's the Houston Tile, Terrazzo and Marble Contractors Association.

Q. Houston Tile, Terrazzo and Marble Contractors Association. Of Houston? A. Yes, sir.

Q. O.K.

Now, what other associations do you belong to? A. Oh, I belong to the Texas Tile Contractors Association.

Q. What is the exact name of that, now? A. Texas Ceramic Tile Contractors Association.

Q. All right. A. And the Texas Terrazzo Association.

Q. Texas Terrazzo. A. And the National Tile Contractors Association of America.

Q. Is that called the Tile Contractors of America, is that— [581] A. Incorporated.

Q. Is it called National Tile Contractors or just Tile Contractors of America? A. No, it's called the National Tile Contractors Association of America.

Q. I think it's called Tile Contractors of America, Tile Contractors Association, isn't it? A. Yes, I am sorry, I am in error there, it's Tile Contractors Association of America. I knew it was a national organization. I don't know what made me put that in there.

Q. O.K. Any others that you belong to?

All right. A. Well, if you want other trade associations, I am a member of the Producers Council.

Q. No. A. And the C.S.I.

Q. That's right, I think you have given me enough. A. That is all that I can think of.

Q. Now, do you hold any office in the Houston Tile, Terrazzo and Marble Contractors? A. Yes, sir, I am president.

Q. You are president? A. Yes, sir.

Q. And when did you become president? A. Oh, I have been president for over ten years.

[582] Q. For over ten years.

And, let's see, did you hold any office prior to being president? A. No, that is when we formed, I think.

Q. How about this Texas Ceramic Tile Contractors Association, do you hold any office in that? A. Yes, I am vice president.

Q. Prior to that did you hold any office? Oh, let me ask you this first. How long have you been vice president?

A. I have been vice president for two years. This is going on the second year now.

Q. Two years.

How about did you hold any office before vice president?

A. No, I have been on the Board of Directors.

Q. What is the Board of Directors? A. We are still speaking of the Texas Ceramic Tile?

Q. Yes. What is that? A. You mean you don't know—

Q. I mean what do they do, do they set policy or something? A. You don't know what the Board of Directors is?

Q. Well, would you tell me— A. Yes, for the information, the Board of Directors do set the policies. They are elected by the membership to set policies and determine various questions that come up without going to the membership first, and they bring it up [583] later to be determined by them, to be approved or disapproved.

Q. Pardon me? A. I say they bring these things up, recommendations to the membership later to be approved or disapproved.

Q. And when were you on the Board of Directors? A. Oh, I have been on it, I have been on it a couple of times. I don't remember just exactly what year. It's been within the last five years.

Q. I want to become acquainted with you, you see. I am trying to get your background here. A. Fine.

Q. Do you know if Texas State Tile and Marble Company is a member of these two associations, too, the Houston and the state? A. Yes, sir.

Q. What does that state association take in, the whole

State of Texas, is that the idea, of tile contractors? A. That's right.

Q. Now, how about the Tile Contractors Association of America? A. Well, that is a national organization.

Q. Right, made up of tile contractors? A. Of tile contractors from all over the country.

Q. And do you hold any office in that? A. Not at present.

[584] Q. You have held one in the past or some in the past? A. Yes, I have been on the Board of Directors.

Q. When was that? A. Oh, let's see, about two years ago I got off of the Board, so that was in '57. I would say around in '56.

Q. '56? Did you say '56? A. I am sorry, '66. However, I was on in '56 also. I have been on the Board several times.

Q. Oh, you have? When was the first time, '56? A. Oh, it was back in the '50s. I don't remember the exact date. But just recently, it was two years ago, that I got off the Board. That is when my term expired.

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[588] Q. (By Mr. Capuano) Now, you testified that thirty per cent of your work is installing tile in a mortar setting bed, is that right? [589] A. That's right, around thirty per cent.

Q. And you said that if the tile setters lost this work you would lose thirty per cent of your business? A. Well, we would lose all of it, of that particular, we would lose that thirty per cent.

• • • • •  
[594] Q. Now, you say these bonding agents first started coming out in 19, the early 1950's? A. I would say the early '50s.

Q. Yes. All right. A. Let's put it that way.

Q. Now, you gave us two advantages of having these bonding agents. Can you think of any more? You said you could install it over block or sheetrock. A. Well, it



gives us our, it gives our tile setter more working time, I mean, where the material doesn't set up as fast as when we just used to use the Portland cement, and sometimes Portland cement—

Q. You mean as a setting bed? A. No, as a bonding agent. See, the Portland cement used [595] to dry up on you real fast at different times, depending on the wall behind it, the suction, and temperature, in the areas that you work in. If you have a lot of wind blowing over the surface it dries out too fast. Where your thin-set bonding agents will give you more time where you can work your tile much better. It gives you, just gives you a greater flexibility.

Q. All right.

Wouldn't one of the advantages be that you do not have to soak your tile? A. Well, yes, it is an advantage that you don't have to soak the tile.

Q. You used to soak your tile in the conventional method? A. That's right, that's right.

\* \* \* \* \*

[600] Q. O.K. That is what I am looking for.

Now, I show you Exhibit T-6, the specifications on the Anderson Library. Now, I know this isn't your job.

A. Yeah, that's right.

Q. Look at page 15-2 under 15-6, laying tile, sub-paragraph (a).

Wait a minute. Yes, sub-paragraph (a).

Read that to yourself. A. (Witness complied.)

All right, sir.

\* \* \* \* \*

[602] Q. That's right, you reinforced yours with lath.

Now, would you say under this specification that it would permit letting the tile sit for several days and coming back and applying it later with L.&M. or some other material? A. No, not the way this specification reads.

Q. Because it provides that the area must be covered with tile before the mortar has reached its initial set, doesn't it? A. That's right.

Q. That would be a typical conventional installation, wouldn't it? A. No, I couldn't agree with you on that point because the typical conventional method you can cover it or not cover it the same day. That is the way we always do our work.

Q. That is the way you have always done your work? A. Yes, sir.

Q. Are you saying that perhaps if you got a little area left over you would come back in the morning to finish it? A. That's right.

\* \* \* \* \*

[606] Q. Now, when you were installing tile back in the '30s and '40s in the conventional method, you would not put a setting bed over a whole lot like the wall in the Rainbo Bakery, knowing that you did not have the tile, and you didn't have any idea when you were going to get it, would you? A. No. We could and we have done it where we were required to by conditions on the job. We had to get in there with our mortar coats and get out of there so we wouldn't interfere with the operations of bread-making there, and they wanted us to get through with our Portland cement mortar, get it out of the building. They didn't want to be bothered with dust and dirt.

And even in years past I have done that same thing that I am telling you I am doing right now, that I have covered up what we put with the conventional method and then come back later and finished our walls above and buttered our tile up, skim-coated that wall and done it many a time.

[607] Q. All right. I don't want to keep on this. Are you telling me that that was a typical installation for you, a typical installation, one you did every day of the week as a tile contractor? A. Well, no, back in the old days I don't say it was a typical installation.

\* \* \* \* \*

[608] Q. (By Mr. Capuano) Mr. Martini, I show you Plasterers' Exhibit 14 and ask you if you can identify that.

A. Yes, sir, that is the installation manual of the L.&M. system.

Q. And on this job I believe Mr. Colvin testified you used the L.&M. concentrate. A. That's right.

Q. And that is the dry mixture that you pour into your Portland cement. A. That's right.

Q. And much of this concentrate would you use to a bag of Portland cement? A. I think you use one bag, one box of concentrate to one bag of cement, normally.

Q. And your bag of cement is what, ninety-four pounds? A. Ninety-four pounds, yes, sir.

Q. And your bag or box of concentrate would be how many pounds? A. Oh, I don't remember the exact weight. It would be around twenty to twenty-five pounds.

\* \* \* \* \*

[609] Q. Now, you could add sand to that, couldn't you? A. You could.

Q. If you want to make it a little thicker? A. Well, it depends on the way you use it if it's necessary to add sand to it.

Q. But you could. A. Oh, yes, yes.

Q. Have you ever added sand to it? A. Sometimes.

Q. Does L.&M. make a mixture that already has sand in it, too? A. Yes.

\* \* \* \* \*

[612] Q. In fact, that is the association that developed thin-set mortars, isn't it? A. Well, let's put it this way, they took it up after Bill Love and Charlie Montgomery.

Q. Oh, Bill Love and Charlie Montgomery were really the first to— A. Well, they were the inventors of it.

Q. They were the inventors of it? A. That is where the L.&M. comes from.

Q. That's right. And then the Tile Council of America picked it up? A. That's right.

\* \* \* \* \*

[613] Q. (By Mr. Capuano) I am going to show you Plasterers' 15 and ask you if you can identify that? A. Yes, it's the Highlights of Tile Technical Progress.

\* \* \* \* \*

[617] Mr. Capuano: On page, sorry, page six. Just below the section or in the section where it says Still More Advantages. I am asking him to read the last sentence.

Q. (By Mr. Capuano) Would you read that out loud, please? A. It says "Dry-set can cut the weight of the tile bed to one-eighth of a conventional installation, and a job that might take nine days by the old method can be done in two days."

Q. All right.

Now, when they are referring there to the tile bed in the conventional installation, what coat of mortar were they talking about or are they talking about? [618] A. Well, they are talking about the L.&M. bond coat there.

Q. When they are talking about the tile bed— A. When they say dry-set that is what it means there.

Q. Dry-set means L.&M. in that material can cut the weight of a tile bed to one-eighth of a conventional installation.

Now, aren't they stating there that a bed of L.&M., or call it, if you want, a bonding agent, weighs approximately one-eighth of putting on a regular half-inch, up to three-quarter inch, tile setting bed in the conventional method. A. No, it weighs less. There is no doubt about that.

Q. Isn't that what they are saying? A. Yes, it's got to weigh less. An eighth of an inch of mortar can't weigh as much as a half inch of mortar.

Q. And they are comparing it to a regular bed in the conventional method, aren't they, the dry-set mortars as compared to the conventional bed? A. Well, the way this reads, evidently that is the way they are comparing it, but I still can't agree with them.

\* \* \* \* \*

Q. Now, Mr. Martini, maybe I can refresh your recollection a little bit. Weren't you on the Board of Directors of the Texas Ceramic Tile Contractors Association in 1961 and '62? A. I don't remember the exact year, to be honest. There [619] have been several years since I have been.

Q. It was around that time, wasn't it? A. Well, it could have been in the late '50s.

Q. You say you have been on it several times? A. Oh, I have been on it a couple of times, yes.

Q. So one of the times could have been around 1961 or '62, couldn't it? A. Well, possibly. I don't know. Without checking, I couldn't answer your question.

Q. And you would be the representative for the southeastern area of the State of Texas, wouldn't you? A. That's right.

Q. Do you know Mr. Bill B. McHarg? A. Oh, yes.

Q. Who is he? A. He is a tile and marble contractor in Fort Worth, Texas.

Q. Has he ever held any position in the Texas Ceramic Tile Contractors Association? A. Yes, he was president at one time.

Q. Who is president now? A. Mr. Sam Villa, V-i-l-l-a, from San Antonio.

\* \* \* \* \*

[620] Q. (By Mr. Capuano) Who was president before Mr. McHarg? Does Mr. Bernard ring a bell? A. Yeah, George Bernard.

Q. Right.

Now, Mr. Montgomery is a tile contractor, isn't he? A. Yes.

Q. Charlie Montgomery? A. Yes.

Q. Where is he, in Waco? A. Waco.

Q. What is it, United Tile? A. Yes.

[621] What does Mr. Love do, is he a contractor? A. No, Mr. Love is with L&M.

Q. He is running L&M. and Mr. Montgomery is a tile contractor. A. That's right.

Q. Do you know if Mr. Montgomery is a member of the Texas Ceramic Tile Contractors Association? A. He was at one time. I don't know if he is still a member or not.

\* \* \* \* \*

[640] Q. Now, looking at T-7, your specifications for the Rainbo Bakery job— A. Yes, sir.

Q. —is that dated? A. No.

Q. When was it prepared? A. Oh, it was prepared—

Q. That paper in front of you. [641] A. Yes, sir.

Q. When was it prepared? A. Oh, that paper was prepared several weeks ago.

Q. How many weeks ago? A. Oh, I don't know, two or three, I guess.

Q. For this hearing? A. Yes. Those are my specifications.

Q. I understand that. A. Yeah. And that is the way that we have installed it on several other occasions for a period of several years on the job, and all I was doing is clarifying the method of installation there.

Q. You prepared them for this hearing? A. Right.

Q. Now, you said that the tile layers have lower wage rates than the plasterers, they don't have any fringe benefits, the tile helpers don't have any fringe benefits. A. That's right.

\* \* \* \* \*

[642] Q. All right. The tile setter rates are lower than the plasterer? A. Than the plasterer mortar mixer.

Q. I am talking about the journeymen now, your journeymen. A. Oh, yes.

Q. Your tile layers are lower than the plasterer journeymen? A. Oh, yes, yes, sir.

Q. And your tile layers don't have any fringe benefits, you said? A. That's right.

Q. So that means that you have got lower wages that you have to pay for their work, isn't it? A. Right, lower than if I had to hire a plasterer.

Q. Right, and you like that, don't you? A. Well, anybody does in business, especially when you have to meet competition like you do today.

Q. So that would influence your opinion on who you would like to see do this work, wouldn't it? A. Wouldn't you?

[643] Q. I will ask the questions. You answer them.

Correct? A. No, I wouldn't say it would because I feel that the tile man is more qualified to do it, and if we can do a little bit better job of bargaining than the other man can, that is up to us.

Q. So then just so the Board can understand your testimony, now, the fact that the plasterer has higher wage rates than the tile setter does not enter into your decision as to who you should assign this work to, correct? You are more interested in the skills— A. Well, we are more interested in the skill. Of course, we are interested in cost and in a way it could have a bearing on it.

Q. Well, now, you tell me, does it or doesn't it have a bearing on it? A. If it's going to cost, if it's going to cost me more to do my work with plasterers than it will with tile setters, naturally I am going to take the tile setters.

Q. Right. And you are going to favor the tile setters for that reason, aren't you? A. Certainly.

Q. So that does have a substantial bearing on your opinion as to who you should assign this work to, correct? A. It has some bearing, not all of it.

[644] Q. Well, I want to find out how much. A. Well, I don't know.

Q. Are you saying it doesn't make any difference or it does make a difference, it's a big difference or it's a lot of difference? A. Well, it could make a big difference if it's a big job. Q. All right. So it is a substantial part of your opinion, right, or it isn't? I mean, tell me. A. Well, it is, yes.

• • • • •

[645] Q. O.K. Haven't you also testified that Mr. Longshore [646] even asked you to sign an agreement with him, didn't he? A. Sure.

Q. So he was willing to bargain with you, too, wasn't he? A. That's right. You can't blame him for trying.

\* \* \* \* \*

[647] Q. You did hear my question, didn't you?

All right, let me ask you another one. If someone else, another craft, another contractor, is going into a room, he is going to put up the walls, whether they be sheetrock, Portland cement mortar, any material, at all, then you are going to come along and put your tile on it with L.&M., Crest or one of these other products, there is nothing unfeasible about that, is there? A. Oh, its being done.

Q. There is nothing unfeasible about it to use your word, is there? You do it? A. Oh, yes, we have done it.

Q. And you do it quite often, don't you? A. On qualifications.

Q. You do it quite often, don't you? A. Oh, yes.

\* \* \* \* \*

[658] Recross Examination

Q. (By Mr. Capuano) You said that Mr. McHarg is a member of the Tile Contractors of America and that you have an agreement with him, is that right? The Tile Contractors of America have an agreement with the B.M. P.I.U.? A. That's right.

Q. And you said that that sets forth or stipulates that it's the tile setter's work of putting up the mortar coat? A. Yes, I think it's stipulated in the agreement what the duties of a tile setter are, in the National Agreement.

[659] Q. Yes. How long have the tile setters been entitled to this work under the National Agreement of the Tile Contractors of America? A. Well, it's hard for me to tell. It's been for many, many years.

Q. How long, ten years? A. Oh, I wouldn't guess at that



because it would just be strictly a guess and I wouldn't want to do that.

Q. More than ten years? Less than ten years? A. Oh, it's been more than ten years, I know that.

Q. More than ten years.

So at the time these guide specifications were drafted in 1961 the members of the Texas Ceramic Tile Contractors Association should have known that their agreement with the B.M. P.L.U. allegedly assigned some of this work in the specifications to tile layers, shouldn't they? A. Well, I may be able to clarify that for you to some extent. Frankly I am not familiar with this until it came out. I didn't know anything about it. They were having some meetings with the plasterers, the boys up in Dallas and Fort Worth area, of the Texas Ceramic Tile Contractors Association. And all we got was a printed copy of it when it was all over. And frankly I never did approve it personally, and I don't know as it's ever been approved by the National Tile Contractors Association.

\* \* \* \* \*

[660]

**G. Zambon**

recalled as a witness by and on behalf of the Tile Setters, [661] having been previously sworn, was examined and testified further as follows:

\* \* \* \* \*

#### Direct Examination

Q. (By Miss Thacker) Mr. Zambon, how long have you been in business as a tile contractor? A. As a tile contractor since 1947.

\* \* \* \* \*

[662] Q. Are you bound by the National Joint Board in any of your contracts with the general contractor? A. No.

Q. Would you voluntarily bind yourself to the National Joint Board decisions? A. No.

Q. Is there a clause in your local agreement binding you to the National Joint Board? A. Absolutely not.

Q. Is there one in the National Agreement binding you to the Joint Board? A. No.

Q. Do you have a collective bargaining agreement with any other craft than the Tile Setters? A. No.

Q. Of the total work that you do, say in 1966, what per cent of that work did you install the mortar setting bed in which you used tile setters?

\* \* \* \* \*

[663] A. I would say in 1966 probably was about forty percent that we float, ourselves.

Q. (By Miss Thacker) So then if the tile setter does not have a right to do that work you would not be doing it either, is that correct? A. That's correct.

\* \* \* \* \*

[664] Q. Generally speaking, on the average, what is the thickness of your setting bed or your float coat, though there may be variations, but what does it vary from? A. Well, say it would be around a half inch but sometimes it might be one inch and in some places a quarter of an inch.

Q. Could it be an eighth or three-sixteenths? A. Not solid through. In some areas just to straighten the walls out it might be that, you might be able to put one-eighth.

Q. Since you have been in the business and before, when you worked as a tile setter, has there been any change in the setting bed or the float coat, itself? A. Absolutely none.

Q. Where are the technological changes, then? A. The technological changes, the only thing I see the difference, before we were smearing the cement, the pure cement, on our float coat, and now we have this new matter that is a retarder, it's called thin-set method, which you smear to give you more time to set your tile, and you don't have to soak it, you can also set it while it's dry.

Mr. Capuana: While it what?

The Witness: While the wall is dry.

Q. (By Miss Thacker) So that you know of no changes in the setting bed, itself. [665] A. None.

Q. There are advertisements put out by manufacturers for bonding agents that refer to their product as a "bed". Do you feel it can be called a setting bed in any way, this bonding agent? A. Absolutely not because when we put tile in the conventional way we put cement on the wall, too. What do you call that? Another coat there to bond our tile.

Q. Can you get the same job done on the application of the bonding agent that you do when you apply the float coat to your wall? A. If I—

Q. Can you plumb, rod and square it and do all of the same things that you do to your float coat, can you do that with the bonding agent when you put it on, on the wall? A. No.

Q. Why can't you? A. Well, because on the bonding agent it's just something to bond the material. You follow the contour of the wall or ceiling or whatever it is. You cannot straighten out, you just follow the way it is. But the float coat, that is the one that counts. You put it real straight and then this material you smear on the wall with a notched trowel or whatever you want to smear it with. And you put your tile, you install your tile on it. But it's got to be straight [666] before you put it on unless you can go around in a curve.

• • • • •

Q. Of the two crafts which craft do you consider to have the superior skill in the application of the float coat, as the tile setter calls it, or a coat of plaster material, as the plasterer calls it? [667] A. If it is for to install ceramic tile, naturally the tile setter would be a lot more qualified because he is working every day in tile. He knows more precisely how that wall should be floated.

• • • • •

Q. Now, in the total installation how would you allocate the time as to the floating and of the actual tile setting?

A. How long it take me to float compared to setting the tile?

Q. Yes. Yes. A. I would say sixty per cent to do the floating.

Q. Where does the real art of the craft lie? A. The craft lies particularly when you have units, like if you have a door jamb, soffits for swimming pools, and a lot of complicated things which for a man, if he is not continually in the trade, they will be almost impossible for him to do.

Q. Have you had pobs where you have had plasterers on the pob to put on a coat of mortar? Have they been on your payroll? [668] A. I believe I have one time just to help, to fill in, in the Tennessee Gas Building. I don't remember how long. A very short time. That's the only time in my life.

Q. Did they work under direct supervision? A. Yes, sir.

Q. Of a tile setter? A. Just what you call browning or roughing, no finish for our tile.

Q. Oh. You mean they were doing their regular brown coat? A. Yes.

Q. Then they were not doing any work in controversy here? A. No, absolutely not.

Q. Do you have a preference of work assignment to the two crafts? A. Absolutely, yes.

Q. Which one? A. To the tile setters.

Q. Is this solely because you have a collective bargaining agreement with them? A. No, no. As I said before, he has to be trained and it takes many years before he is able to do it.

Q. Does the fact that his, and by his I mean the tile setter, the fact that his rate is lower and he has no fringe benefits, is that a controlling factor? A. Not to me, no.

[669] Q. Would you tell us exactly what your job was at the Anderson Library? A. I will be glad to. On the Anderson Library, as a rule, whenever we go on a job if it is for the plasterer to scratch and brown, square and plumb, whatever is to be done, we are happy to see them.

If they wanted to do it and it calls like that, it's fine. But on this particular case it was not in my specifications, and I don't remember if it was in the plasterers', where he is supposed to put this brown coat, whatever you call it.

So when we went to the job we apply what we call one coat. The plasterer did scratch the metal lath, and we put our float coat in one time, and we installed the tile later.

Q. Was there— A. We squared and plumbed it and— beg your pardon?

Q. Was there room for another coat for the plasterer to apply? A. In some areas not. Some there probably was.

Q. Then he put in the, the plasterer put in a preliminary rod, squaring and plumbing of the wall, is that correct? A. No, he just scratch over, put the one scratch coat over metal lath, and that is all.

Q. That is all. Did he do a preliminary rod, square and plumb? A. No. He didn't do it because he wasn't called on this [670] particular job.

Q. Now, did you have quarry tile and ceramic tile in this job? A. Yes, ma'am.

Q. Where was the quarry tile? A. The quarry tile were in the stairwells.

Q. That was over metal lath, wasn't it? A. Part were metal lath and part were either structural tile or brick, concrete blocks.

Q. Could you put your tile on the same day that you floated it in that case, quarry tile? A. No, it's too difficult.

Q. Why? A. Well, because quarry tile, they are too heavy.

Q. What would happen? A. It happen if it is in an area you don't have enough thickness, when you start your tile it's got a tendency if you hit too hard, it will loosen the bond, and when it's too soft it will sag, come down.

Q. Fall off the wall? A. Fall off, that's right.

• • • • •

[671] Q. Now, is it easier to have only one craft on the job or is it just the same if you have more than one on the

job? Does it make any difference? A. Well, it makes a lot of difference. It's a lot easier if you have one craft on the job which you can send them in there, install your wall, floors, ceilings, whatever you have, without having two crafts.

Q. Do the plasterers normally have access to the tile and the lay-out of the room that you are going to make at the time that they put up their brown coat? A. No, ma'am, no, they might have access to the specifications, but that don't help them.

Q. Are the specifications that the general contractor has in his office sufficient for the plasterer to know exactly what your tile installation is going to be so that he can make his wall to conform to your specifications? A. Even myself, that I work all my life, I won't know unless I have the tile on the job. I will not be able to give any dimensions whatsoever.

Q. Why isn't it possible? A. Because usually when we are doing a job, we go on a job. [672] ourselves, the plasterer has already, whatever he call it, put the brown coat on it, so when we get there we have to proceed with what we have, whether it's good, bad, or whatever, we just have to follow.

Q. Well, my question is why is that without the tile you cannot lay out the wall properly or float the wall properly? Why is it necessary to have the tile in order to do that? A. It is necessary because each manufacturer have different size of tile. We are speaking about, say, if it calls, say, four and a quarter by eight and a half, well, it's not four and a quarter, some manufacturers it's four and three sixteenths, four and three-eighths, or over. Same thing in two-by-two tile, it might be two and one-eighth instead of two inches. Well, when you are speaking of when you have a jamb or columns where you come out where it specify in many cases that the union must be full, if you have got in particular one-by-one tile, unless you have start the job, instead of one inch it's one inch and one-sixteenth, you cannot lay the tile unless you have the tile on the job, that is impossible.

• • • • •

[673] Cross Examination

Q. (By Mr. Capuano) I was interested, Mr. Martini——

Miss Thacker: This is Mr. Zambon.

Mr. Capuano: I am sorry. Mrs. Zambon.

\* \* \* \* \*

[675] Q. O.K.

Now, on this Anderson Library you received a copy of the Joint Board award in this case, didn't you? A. Yes.

[676] Q. That was the November 11 one and the—— A. I got them all.

Q. You got them all? A. Yes.

Q. So we know what we are talking about, let's just get the exhibit numbers. P-3 and T-8. You got copies of both those? A. Right.

Q. And they referred to the Southwestern Construction Company, contractors, Texas State Tile and Terrazo Company, sub-contractor, and the Science Building as the job. A. Right.

Q. Now, that wasn't the job they were talking about, was it? A. No.

Q. It was the library job, wasn't it? A. Right.

Q. You understood that, didn't you? A. Right.

Q. And you sent a telegram to the Board, in fact, telling them this. A. That's right.

Q. But they kept calling it the Science Building, didn't they? A. Yes.

\* \* \* \* \*

[678] Q. Now, I would like to clear up a little bit the actual work that has been done on this job.

Now, let's stick with the bathroom first. What did you have, maybe two bathrooms on each floor? A. Yeah.

Q. And they were sort of large bathrooms, weren't they? A. Correct.

Q. And you had ceramic tile, what, glazed ceramic tile in there? A. Four and a quarter on the walls and two-by-two on the floors.

Q. All right.

And out in the stairwells, you had two stairwells? A. Four stairwells.

Q. Four stairwells. O.K. You have quarry tile out there?

A. Right.

\* \* \* \* \*

[683] Q. No. You put this coat on the wall and you let it dry, right, the mortar coat? A. Yeah.

Q. Then you say the next day you come back and put the tile on? A. Right.

Q. Well, was there ever a lapse longer than one day before you put the tile on the float coat? A. Not in the bathrooms, I don't think so.

Q. Not in the bathrooms. You did that in one day? A. Yeah.

Q. All right.

So then the next day you came back and you used this mixture of Portland cement, water and what else? A. And some concentrate made by Kaiser.

Q. Made by Kaiser. Do you know what it's called? A. It's concentrate, Kaiser is the manufacturer that makes it.

Q. Is it a liquid concentrate or powdered concentrate? A. Powder.

Q. Is it a Crest concentrate? A. That's right, it's Crest.

Q. And is that similar to the L.&M. concentrate we just discussed here? A. Yes, similar.

[684] Q. And did you have to mix about twenty-five pounds of that with each bag of Portland cement? A. Yes.

\* \* \* \* \*

[685] Q. Well, all right, twenty percent.

Did you try using just neat cement to put that on the wall, put the tile on the wall? A. Well, using the neat cement it was drying too fast. I was afraid it was not making a good bond. Since this thing come out we found it's a good thing to keep nice and soft so we can put on tile without water. We know it will bond.



Q. The neat cement was drying too fast? A. If you put just neat cement without this retarder of concentrate it will dry up too fast, it won't bond your tile.

Q. What is that? A. Why is that?

Q. Yeah, why would it dry too fast? A. Because the wall was too dry.

Q. You mean because it was a day old, you mean? A. Yes. Well, even the same day, where you have got a small amount, it would be too dry.

\* \* \* \* \*

[686] Q. Wallboard, gypsum plaster? A. Right.

Q. Have you put any right over concrete block yet, or brick? A. I don't remember. Concrete blocks, I don't think I go much for it, but probably I will if I have to do it.

Q. How about brick? A. No, not on brick.

Q. How about right on a concrete wall, have you ever done that? A. I think we have one job on concrete wall, yes.

Q. One job? A. Yes.

Q. You said you were a member of the Tile Layers, didn't you, the union? A. Yes.

Q. When you install tile right over gypsum plaster do you know if the tile layers claim the installation of the gypsum plaster coat? A. No, if it's gypsum plaster we do not claim it. That is not ours.

Q. They don't claim it? A. No.

Q. And you don't claim the installation of the sheetrock, either? [687] A. No, but we don't guarantee it, either, because I am working now——

Q. Yeah, I understand your guarantee. I understand your guarantee.

When you put it over gypsum plaster, you know, like we just talked about, say not a white coat gypsum plaster, just the brown—— A. Just the brown, yes.

Q. ——what would be the setting bed there? A. There will be no setting bed.

Q. You wouldn't have any setting bed? A. No. That one there would be considered the setting bed, that one there.

Q. What do you mean that one there? A. Or I might have to put it up with some organic adhesive in there.

Q. You pointed your head, now, and the record didn't get that. What are you talking about? You said that one there might be the setting bed. What did you mean? A. Well, the brown coat as you call it, that one there will be a backing, something to put, it's got to be a surface that we have to put the tile on.

Q. Uh-huh. A. That will be serving as part of the wall, I guess, that one there.

[688] Q. Would you say that would be the setting bed, then, when you put it over gypsum brown coat? A. Well, whether it's bad or good, I call that the setting bed, yes.

\* \* \* \* \*

[689] Q. Let me see if I can understand you, then.

If the plasterer put up the mortar coat on the wall of Portland, say in those bathrooms at Anderson Library—let me [690] put it this way first, you said that the mortar coat you put up on the wall was the setting bed, right, or was the setting bed for your tile? A. That's right.

Q. Now, if the plasterer had that in his contract, he would put up that mortar coat, and you come back the next day and covered it with your Crest concentrate, what would you call the coat that the plasterer put up? A. I would call it just a bonding coat to stick the tile with.

Q. No, what would you—let me ask you this first. If the plasterer put the coat of mortar on the wall, what would be the purpose of that coat? A. The purpose of the coat is to be sure that the walls, when we apply this L.&M. material, thin-set, to be sure that the back is straight because the last part that you put this thin layer of L.&M. or Crest that you put, that one there serves just to bond the tile, but if the wall is not straight, if it goes like this (illustrating), you just follow the contour of the wall.

Q. Please, I wish you would just limit your answers to my questions. The purpose of the coat would be to straighten the wall, right. plumb the wall up? A. Correct.

Q. Now, when you went in there and you put that coat on the [691] wall, the mortar coat in the bathrooms, what was the purpose of the coat of mortar that you put on? A. The purpose is that I think we put it up better than they do, that's right.

Oh, now, please.

Mr. Capuano: Mr. Hearing Officer, I am going to have to ask that he respond to the questions. I keep getting all these voluntary statements about his position.

Q. (By Mr. Capuano) Now, I think my question was very clear to you. What is the purpose of the mortar coat that you put up on the wall in the bathrooms in the Anderson Library? A. The purpose was to receive tile.

Q. Did it have any other purpose? A. No.

Q. It didn't. A. No. The purpose was to put a nice plumb, straight and square wall, and then to install the tile the next day with either—with the new methods we have, whether you call it L.&M. or Crest or whatever it was.

Q. All right.

So you plumbed and straightened, squared and rodded the wall with that coat, right? A. That's right.

Q. Now, I was glad to hear your testimony that as far as you are concerned the higher wage rate of the plasterers [692] doesn't enter into your— A. That is not a prime reason, no, not to me.

Q. Would you let me finish my question?

Doesn't enter into your preference between hiring tile setters or plasterers, right? A. If I don't have any preference?

Q. No, wages don't make any difference. A. No.

Q. We can discount wages? A. Right.

• • • • •  
[695] Q. O.K.

Now, if when you were putting tile over sheetrock, your tile setter could put up the studding and sheetrock, make sure you had a nice straight wall, it would be easier for you to put on your tile, wouldn't it, get a good job, right? A. Yes.

Q. It would be nice and straight, wouldn't it? A. Yes.

Q. And then you could guarantee the work that your employees did, right? A. Uh-huh.

Q. But your employees don't put up the walls, do they? A. No, they don't.

Q. In the construction industry you have a lot of crafts doing various parts of a building, don't you? A. Right.

Q. And if we had only one craft it would be a lot simpler, wouldn't it? A. Well, naturally.

Q. There would be no jurisdictional disputes. A. Yes.

\* \* \* \* \*

[699] Q. If you put tile in a bathroom where there is a tub, is the tub installed before you get there? A. Yes.

Q. So when you are building your walls on either end of that tub you can't build your walls out so far that your mortar is [700] going to hang over inside the tub, can you? A. No.

Q. You have got to set back to the edge of the tub, right? A. You have got to make it cover the lip of the tub so the water won't leak.

Q. Right.

And you have got a little bit of room there to move but that is all, isn't that true? A. Well, you have got quite a bit. You have got a little play there.

\* \* \* \* \*

[702] Q. Are you telling me that you did not talk to the architect or the inspector to change the specifications? A. I did not talke to change it, no.

Q. All right.

But you did not install it in accordance with the specification, right? A. Because it was improper.

Q. I understand your reason. I understand. You just gave us that speech. A. O.K.

Q. But you did not do it according to specifications, right? A. No.

Q. Are you saying no, what I said was wrong, or no, you did not do it? A. No, I said that you are right, when I said no, I didn't do it.

Q. O.K.

Now, you are a member of the Texas Ceramic Tile Association [703] also, aren't you? A. Yes.

Q. And you have held some offices in that group, haven't you? A. Never did.

Q. Never did? A. No.

Q. Never been on the Board of Directors? A. Never did.

Q. Do you have a brother in your firm that has been on the Board of Directors? A. No.

Q. Would it refresh your recollection if I suggested that August of 1961 Mr. G. Zambon was on the Board of Directors from Southeast Texas Zone? A. If I was they must have elected me without even knowing it because I attended one time that meeting there in San Antonio and never did go any more.

Q. Did you know they were using your name on their letterhead? A. They might, I don't know.

Q. You don't know? A. No, sir.

• • • • •  
[705] Q. (By Mr. Capuano) Just one question. Has the Plasterers Union ever told you that they would not work for you? A. No.

• • • • •  
[710]

**Eelzie Good**

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

• • • • •  
**Direct Examination**

Q. (By Miss Thacker) Mr. Good, are you a tile setter? A. Yes, ma'am.

• • • • •  
[716] Q. Now, Mr. Good, if you are going to do an expert job of tile setting, what is necessary? A. It's necessary to have a plumb and straight wall.

Q. Is the wall plumb and straight when the plasterers get through with it, generally?

Mr. Capuano: Oh, now, I am going to object to that question.

Miss Thacker: Well, now, the plasterers do, according to the agreement, a preliminary plumb. It says so in the agreement. It is preliminary. So I am asking him if they [717] are in effect following the agreement. They are not called on to get it completely.

Q. (By Miss Thacker) Is it preliminary. Is the job, Mr. Good, that the plasterers do in a conventional method or a one float coat method a finished job as to plumb, rodding and squaring? A. No.

Q. Then when you come onto the job in that sort of a tile installation, a conventional job or one float coat method, what do you do then? A. Well, I usually check the job out and get with the plasterer and try to get it patched up where it's wrong.

Q. Well, now, this is my question here, where you are doing a conventional method or a one float coat method that you are putting on the float coat—— A. That I——

Q. That you are putting on. He has done a scratch coat and a brown coat. Now you have got the float coat to put on, yourself, and you come onto the job. He has done the brown coat and the scratch coat. Now, what do you do when you come on to put your float coat on? A. Well, I come in and plumb and square all my walls to float.

Q. Do you have the tile that you are going to put up? A. Yes, ma'am.

[718] Q. Is it necessary to have the tile that you are going to put up? A. Yes, ma'am, I believe it is.

Q. Why? A. Well, all the tiles are from different factories or different sizes, and if you are going to float a wall out to receive tile you have to have the tile there to know what size.

Q. Can you always put up tile the same day you float? A. Yes, ma'am.

Q. On a wet wall will quarry tile stay on a wet wall?  
A. Well, no, ma'am, not on a wet wall it won't.

\* \* \* \* \*

[721] Cross Examination

\* \* \* \* \*

[730] Now, you told me that, or I believe you told Miss Thacker, in the conventional method you have to know the size of the tile, is that right? A. You need to.

Q. Now, the size of the tile is no secret that only tile setters know, is it? A. No, it's not.

Q. Anybody can take a tile and measure it and know what size it is, that is right, can't they?

You are shaking your head yes? A. Yes.

\* \* \* \* \*

[734] Bennie Harold Moore

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

Direct Examination

\* \* \* \* \*

[736] Q. Is it your understanding that the plasterers should scratch their coat? A. They should be scratched if we are going to put our float coat on it.

Q. Should it be scratched if you are going to do a thin-set? A. No, ma'am.

Q. Can you put on the bonding agent on a scratched surface? A. Well, I don't do—you can put it on but you can't get a proper job if it's just scratched. I mean, you would have waves.

Q. Do you have any way of controlling the bonding agents in [737] such a fashion that you could straighten up the wall with the bonding agent alone? A. No, ma'am. We are using the thin-set and usually it takes a long time to set, so

if we try to straighten a wall up with it, it would roll right off the wall, right down the wall.

Q. In your bonding agent do you generally have different thicknesses, say, on a surface— A. Yes, ma'am.

Q.—would there be some places where it would be a 32nd and some where it might be a 16th. Does your bonding agent vary in thickness on a surface? A. Well, we use different notched trowels to install our bonding agent.

Q. But is there a variation of your bonding agent or is it generally the same thickness in your installation? A. No, ma'am, it's not. Like I say, we use different notched trowels. We use an eighth-inch notch and then—

Q. So it's pretty uniform, then? A. Yes, we are supposed to put it uniform on the wall, yes, ma'am.

Q. So then you are saying that you can't correct any inequalities in the surface through your bonding agent alone? A. No, ma'am, you sure can't.

\* \* \* \* \*

[738] Q. (By Miss Thacker) Now, Mr. Moore, can you put up successfully quarry tile on a wet setting bed? A. Well, I would think that you could. I mean, if I set it.

Q. On a wet setting bed?

Mr. Capuano: It's repetitive. He answered the question.

A. If, I mean, if your wall isn't too wet where it will slide, you could.

\* \* \* \* \*

[739] Q. Now, since you have been tile setting has there been any change in the setting bed, itself? A. No, ma'am, there hasn't other than the thin-set method, but there has actually been no change in your setting bed.

Q. No change in the setting bed? A. No, ma'am.

Q. What effect has the new bonding agents had on tile installation? [740] A. It sticks your tile to your setting bed.

Q. Does it have any other purpose, the bonding agent? A. No ma'am, that is just about it, a bonding agent.

\* \* \* \* \*



## Cross Examination

Q. (By Mr. Capuano) Mr. Moore—is that correct? A. Yes, sir.

Q. What did you mean you came in with two vouchers into the tile setters? A. Well, other than going through an apprenticeship, well, I was setting tile, I mean, I wasn't setting but I was helping an uncle of mine, and I more or less picked up from him how to set tile, and I got two proper vouchers and got in the union.

Q. Was he a union contractor? A. No, sir, he was a union tile setter.

Q. He was a union tile setter? A. Yes, sir.

Q. Well, I don't understand, were you helping him when he was working for a union tile contractor? A. Yes, sir.

Q. Well, were you in the Helpers Union, then? A. Where I was helping them they didn't have a helpers union.

\* \* \* \* \*

[744] Q. Now, you have been on other jobs where the plasterer had put on the mortar coat and you have put on the thin-set material, haven't you? A. Yes, sir.

Q. Have you gone to the plastering contractor and demanded that work that the plasterers are doing? A. No, sir, I have never.

Q. Now, have you put any tile over gypsum plaster? A. Yes, sir, I have.

[745] Q. And you use an organic adhesive for that, don't you? A. Well, they have got what they call Wellerete or Bondcrete that the walls are painted with and then we go over it.

Q. With your organic adhesive, is that right? A. With our thin-set, or either mastic, if we are using a mastic.

Q. Well, do you know, would you put a dry-set Portland cement mortar over gypsum plaster? A. No, sir.

Q. What would you use? You would use some sort of mastic, you say? A. Well, like I say, you paint, if you use Bondcrete or Wellerete—

Q. You put a waterproofing over it, you mean? A. Yeah.

Q. Then you put some sort of adhesive onto it to put your tile on, right? A. Well, a mastic or thin-set, either one.

Q. Right. A. You can use either one.

Q. Well what is the difference? You say a mastic or a like L. & M. or a premix.

Q. Right. You would normally use the mastic over gypsum. [746] wouldn't you? A. Well, actually it's according to what your boss wants it installed with.

Q. You could use both.

Which is the organic and which is the inorganic of those two? A. Well, your mastic—I don't know, to tell you the truth.

Q. You mentioned Wellerete? A. Yes, sir.

Q. Isn't Wellerete a bonding agent? A. Yes, sir, it is. It makes your material that you are putting on to the surface bond to it.

Q. And then do you put something on top of the Wellerete? A. Yes, sir.

Q. You would put one of these adhesives on top of the Wellerete, is that what you are saying? A. Yes, whatever you are going to stick it with.

Q. Well, when you are putting it over gypsum plaster what would be your setting bed, then? A. You stick direct.

Q. Direct to what? A. To the plaster.

Q. But would there be a setting bed in that situation? A. Well, it would be just, you would stick direct to what—a setting bed is when we put, or the plasterer puts the last—[747] our float coat is our setting bed.

Q. Well, you mean it's only called a setting bed if you put it in, is that what you are saying? A. No, sir, I mean we can stick direct to the gypsum board or any of that.

Q. Well, what would be the setting bed when you stick right to the gypsum board? A. That board, what it would be set to.

Q. Does the tile setter claim the installation of the wall-board? A. No, sir we don't.

Q. How about if you put the tile right over concrete block, do you as a tile setter claim the concrete block? A. No, sir.

Q. Now, you were asked a question about some ceramic tile, if you could set it on a wall that is fairly wet, and I think you said, you know, you couldn't set it on that.

If you got a wall, I am talking about Portland cement mortar now, if that is firm could you put the ceramic tile on it then? A. Yes, sir.

Q. If you started, you know, putting up your float coat about 8:00 in the morning—is that about the time you start work? A. Yes, sir.

[748] Q. You know, in a typical bathroom, say in an apartment house or something like that, about when would that mortar start getting firm? A. Well, it's according to the wall that you float.

Q. Sure, I realize that. Say you have got it on concrete block. A. And usually—you mean when would it start getting hard?

Q. Start getting firm so that you could start laying your tile. A. Well, I would give it—usually the way I do it now, this is the way I do it.

Q. Sure, that is what I want. A. I figure that I can, it's over half of our work, you know, browning out, floating, and I can put up what I float that morning with tile.

Q. You mean you would float it in the morning and then go back and start covering it in the afternoon? A. Yes, sir.

Q. Now, when you are going to put this Crest or L. & M. on the wall you don't want the walls scratched, do you? A. I don't want no scratched wall to stick tile to.

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[752]

L. D. McHargue

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

[753]

Direct Examination

[757] Q. How much time of this apprentice program do they spend learning how to put on the float coat or the setting bed? A. I would say between sixty and sixty-five per cent.

Hearing Officer: All right.

Would you please explain to us how the apprenticeship program operates?

The Witness: As to how the apprentice—

Hearing Officer: Right, how do you begin and how does it [758] end?

The Witness: Well, a union contractor sends a letter of request in to the local requesting a certain or a person by name, and then it's voted on at the Union and, in other words, we have a certain—our apprentices can't be over a certain percentage of the entire membership.

Hearing Officer: In other words, the contractor is requesting that this individual be admitted to the apprenticeship program, is that what is happening?

The Witness: Yes.

Hearing Officer: O. K.

Go ahead.

The Witness: And if he is accepted by both parties, then he is put on the on-the-job training and he picks the trade up with on-the-job training.

Hearing Officer: What does this on-the-job training consist of?

The Witness: Well, he learns how to prepare mortars, he learns how to lay out the tile work, he learns how to square up a room, plumb up a room, he learns how to use his tools, hawk and trowel, and strings and water levels.

Hearing Officer: How does he learn how to do this?

The Witness: Through the supervision of his mechanic. He is assigned with a mechanic.

Hearing Officer: Well, is the apprentice actually [759] performing these functions——

The Witness: Yes.

Hearing Officer:——or is he in an observation capacity?

The Witness: He is performing, he is helping the mechanic, working right with the mechanic.

Hearing Officer: O. K.

Now, how long does this program take?

The Witness: Three years.

Hearing Officer: Is this a uniform program of three years?

The Witness: Yes, it's a uniform program for three years. Of course, the more advanced he is in the program the more he will be able to do on the job, you know.

Hearing Officer: There's no provisions, for instance, at the end of a two-year period if he appears to be performing satisfactorily then to become a journeyman?

The Witness: Yes, if he can have—if it's agreeable with the contractor and if he can get two vouchers, two mechanics that are members in good standing to vouch for him, then he can break out as a journeyman any time after a certain length of time.

\* \* \* \* \*

[773] Q. (By Miss Thacker) Now, Mr. McHargue, have you ever asked any plastering contractor for this work in dispute? A. No.

Q. Why? A. Well, we don't have any bargaining agreement with the plastering contractors. If we were—the only way we could get this work would be through the Plasterers' business agent, not through the plastering contractors.

\* \* \* \* \*

Q. Now, I want to ask you about some, some questions about the float coat or the setting bed. In tile installation where is the real art of the craft? A. That is the question?

Q. Yes. A. The real art of the craft is in, the whole craft, is in the float coat or setting bed.

[774] Q. Can the bonding agent be considered a——

Hearing Officer: Wait. Before you leave that, as long as we are talking about the art, why do you think it is the float coat that is the real art to a tile setter?

The Witness: Well, the float coat brings it out to your finished dimensions, and it works to the tile that you have in hand to apply to this float coat, and just like the case of three-eighths cuts at the header, a tile setter would, or should have avoided that three-eighths cut. In other words, where you have the material on the job to lay out your work with, you can favor here and there to make the tile work to the best appearance, and the person buying the tile gets the most for his money.

Hearing Officer: And you say the float coat, then, has a direct bearing on the appearance of the tile?

The Witness: The float coat is everything.

Hearing Officer: O. K. Go ahead.

Q. (By Miss Thacker) What is the usual thickness or what is the variation of the thickness of your float coat?

A. Well, I would say where the plasterer has scratched ahead of us, I would say it would be anywhere in the neighborhood of a half an inch and it would be fairly uniform, but on a one-coat method or two-coat method where the plasterer has only scratched the lath or filled the lath up, it would vary from a quarter to three-quarters of an inch, possibly an inch, [775] and then on one-coat work explicitly unless we have a real smooth surface, it would vary anywhere from a quarter-inch to an inch and a quarter, inch and a half, depending on how much——

Q. And the reason for the variations, explain the reason for the variations. A. Well, humps in the wall or a wall may be out of plumb, now, out of square, would be the only reason.

Q. Are you saying, then, that you are straightening the wall by the float coat? A. Yes, you are bringing it out to a finished dimension, straight, square and plumb.

Q. Does the plasterer know what the finished dimensions are going to be when he does his work?

Mr. Capuano: Now, I am going to object. How does he know what the plasterer knows?

Hearing Officer: Well, let's let him——

Miss Thacker: Well What I am asking is does the——

Mr. Capuano: I heard what you were asking.

Miss Thacker: Well, maybe you didn't.

Hearing Officer: Maybe he knows the answer.

Miss Thacker: I will rephrase my question, Mr. Hearing Officer.

Q. (By Miss Thacker) Are the finished dimensions available to the plasterer at the time that he puts on his scratch or [776] brown coat? A. You mean as far as the size of the tile is concerned?

Q. Yes. A. I wouldn't think so. I guess he could possibly get them if he knew just exactly how to go about it, but I don't think the plasterer contractor is going to run this material down, and I don't think the journeyman plasterer is going to have any, enough interest in the finished tile work to run the material down.

Hearing Officer: You can develop this on cross, I believe.

Q. (By Miss Thacker) Now, is the tile usually on the job at the time that the plasterer does his scratch coat or brown coat? A. Not normally.

Q. Now, do you generally float ahead? A. Yes.

Q. Do you generally float ahead? A. In some cases we float ahead and in some cases we turn right around and cover up our work. It all depends on what is more feasible as far as the installation of the work, whichever way we can give the contractor the most for the hours.

Q. Does the size or the type of the tile have anything to do with it? A. Yes.

[777] Q. What? A. Well, if you are working small, say small, three-quarter inch ceramic, you have to have a hard surface to put it on to get everything straight and nice, and if it's heavy tile it's got to be firm or it will pull itself off the wall or sag, and then you have got conditions where pos-

sibly the plasterers use a hot scratch coat and your mud will burn on you and when it gets to a certain stage you have a sandy surface on the float coat and you try to put tile on it, you pull the bonding agent and the tile and all off.

It doesn't bond.

Q. It breaks the bond? A. Yes.

Q. Now, Mr. McHargue, on ceramic work, particularly, what about hanging walls where your float coat is wet, does that have any effect on it? A. You mean on the small, say like three-quarter inch ceramic?

Q. Yes. A. You can't hang ceramic over wet walls. You can put it up there but you can't work it. You get it out of shape if you try to pull the paper off it. You fill the ceramic up with sand to hold the joints when you put it on the wall, and if you work it then it gets itself out of shape.

Q. Now, you have used the term hanging. What do you mean by hanging? [778] A. Putting a neat cement coat on the wall or buttering the back of the tile and putting it on the wall, blocking it in.

• • • • •  
Q. Now, on your ceramic tile do you start at the top or start at the bottom? A. Oh, it all depends on what kind of job it is. We start at the top.

Q. You have a line to work from? A. Yes, we have to start from a line regardless of whether we start from the top or from the bottom, and it has to hang to that line.

Q. All right.

Now, if it's a wet setting bed can you stay to the line then? [779] A. No, you can't.

Q. Why? A. When you work your tile it won't stay with the line. It moves.

• • • • •  
[786] Q. Now, I want to ask you something about the bonding agents. What is the purpose of it? A. What is the purpose of the bonding agent?

Q. Yes. A. To stick tile to the wall with.

Q. Is it purely an adhesive? A. Yes.



Q. Would it be comparable, in your opinion, to the glue used by the paperhanger? A. Yes. it allows you about as much room for corrections.

\* \* \* \* \*

[788]

#### Cross Examination

Q. (By Mr. Capuano) Mr. McHargue, is that correct, McHargue? A. Yes.

[797] Q. Now, you talked about your apprentices, you said you had eleven or twelve. Is your apprentice program registered with the B.A.T.? A. Who is B.A.T.?

Q. Bureau of Apprenticeship Training of the U.S. Labor Department. A. As far as I know we are. They are registered with the [798] International Union in the Stake Conference.

A. The Stake Conference is registered with—

Q. And the International Stake Conference is registered?

A. Pardon?

Q. You say the International Conference is registered?

A. The Stake Conference is registered with—

Q. I am sorry, the Stake Conference is registered with B.A.T.? A. As far as I know they are.

Q. As far as you know.

Do you have some apprenticeship standards that you go by? A. On-the-job training.

Q. Well, do you have anything written down, any sort of written program for your apprenticeship standards? A. we have it, I am sure, but I am not too familiar with it.

Q. You are the business agent of the local? A. Newly.

Q. The newly elected business agent? A. Yes, newly.

Q. Well, for about seven months, now? A. Well, I have been tied up in other areas for the last seven months.

Q. It there any set amount of time that a person must act as a helper before he becomes a member of your union?

[799] A. As an apprentice?

Q. No, as a helper. A. Now, are you speaking of the Tile Layers Union or the Helpers Union now? Which are you referring to now?

Q. Well, do you have any tile helpers in your union? A. No.

Q. Well, then I am talking about the union that the helpers belong to. A. Now, you are asking me if—

Q. If you will let me clarify it, I don't believe I used the word union, at all. I simply asked you is there any set time after which a helper can become a member of your union or does automatically become a member of the Tile Layers Union? A. No.

Q. Do they ever become members? A. Of our union?

Q. Yes. A. If they want to come in on the apprentice program. They don't automatically from a helper become a journeyman tile layer.

Q. They have got to go through the apprentice program?

A. They don't have to, but they have got to learn the tile trade somewhere. They can't come in as a journeyman mechanic, from a helper to a journeyman mechanic.

Q. And they don't learn it as a helper, is that what you are [800] telling me? A. That's right.

Q. Supposing you have someone who has been a helper for a few years and he wants to come in your union, he has got to serve a three-year apprenticeship? A. Well, he has either got to serve an apprenticeship to prove his proficiency or he has to go to work in an open shop somewhere and get the experience because he can't come in as a journeyman, from a helper to a journeyman mechanic.

Q. So if he goes to an open shop and gets some experience as what, a tile setter? A. Yes.

Q. Is that it? A. That is what I would assume.

Q. Well, now, you are the officer. I am not. So is this what he would have to do? A. Well, yes, I suppose if he wanted to be a tile setter mechanic he would have to have some experience from somewhere. Now, we cover marble and terrazzo, too.

Q. All right.

So you talked a bit about these vouchers, too. Is that what you mean, he would have to get two statements from——

A. If he came in as a journeyman mechanic he would have to have two vouchers.

Q. Two vouchers from two of your members? [801]

A. Two members, not necessarily my members, but members of the Tile Setters of the B.M.P.I.U.

Q. Who are in good standing? A. Yes, who are in good standing, for three years good standing.

Q. In other words, he has got to get vouchers from two members of the B.M.P.I.U., is that what you said, or two tile setters? A. Yes, or install a job and have an examining committee go over his work.

Q. Well, can these two members, must they be Tile Setter members of B.M.P.I.U. or any members of B.M.P.I.U.?

A. Well, how could a——

Hearing Officer: He is asking the questions now. Answer the one he asked you.

A. Pardon?

Repeat it.

Q. (By Mr. Capuano) I said must these two members who vouch for this man be Tile Setter members of B.M.P.I.U. or can they be B.M.P.I.U. members who do other work, such as cement masons or brick masonry, or so forth? A. Normally it would be of the same craft.

Q. All right. The same craft.

And they have got to be in good standing for three years before they vouch for this helper who wants to come in?

A. That is my understanding.

[802] Q. And by that you mean he has got to have, they have got to have their dues paid up for three years? A. Well——

Q. To be in good standing. A. Yes. Not three years in advance.

Q. No, no, I mean they had to be in good standing for three years past in order to vouch for this man who wants to come in as a journeyman, right? A. I believe that's right.

Q. Well, now, what is the relationship between having your dues paid for three years and being able to vouch for the man's ability to put tile on a wall? A. I am not sure I know.

Q. O. K.

So they come in, then, through this apprentice program, getting two people to vouch for them being able to do the work if they are a helper, or you say they can just come to you and ask you to go and inspect a job they did? A. They have. Not to me, no.

Q. Who do they go to? A. They put it, it's brought to the attention of the Union, and there is a committee that goes out, not any one man. There is a committee.

Q: Well, all right, a committee goes out and looks at it? A. A three-man committee.

[803] Q. So you can do it any one of three ways that you can get into your local union, right? A. Yes.

Q. All right.

Now— A. Except an apprentice still has to be vouched for when he finishes his apprenticeship program.

Q. Oh, you still have to be vouched for? A. Yes, he does.

Q. Can he take a test at the end of it? A. If you have vouchers you don't. And normally a shop that he works in will have vouchers.

Q. All right.

Then you made a comment which I am not sure about. You said an apprentice can become a journeyman after a certain amount of time. And as I understood it you meant different than the end of a three-year period. A. You mean shorter than a three-year period?

Q. Yes. A. That is possible.

Q. Now, how is that possible? A. Well, if he is proficient enough in the trade that he thinks he can command the wages of a journeyman, and the contractor that he is indentured to feels that he is qualified as a journeyman, well, then we, if he can secure the vouchers. [804] then we can turn him loose as a journeyman.

Q. Now, do you actually see that an apperntice gets in-

struction in all phases of your work. A. We try our best to.

Q. Well, how do you do that, by sending him out in a shop and having him just work with journeymen, is that it? A. Normally.

Q. Well, then it's possible that he could go out and work with a journeyman and only be sticking tile on sheetrock or concrete block, isn't it? A. It's possible, I suppose, if that is all the work that the shop that he was working in had, but it would take him about ten years to make a mechanic this route.

Q. So then he wouldn't get any experience in putting up a mortar coat, would he? A. No, he wouldn't. He would be a thin-set mechanic when he got through.

Q. Right.

So fifty per cent of his time wouldn't be spent floating out walls, would it? A. Well, we are speaking of a three-year program and a man being a mechanic when he finishes.

Q. Yes, but if for three years he isn't spending all this time doing jobs where the tile setters are floating out walls, he is not going to be spending fifty per cent of that three [805] years floating out walls, he is? A. Well, I don't suppose he would, possibly not spend fifty per cent or sixty per cent or seventy per cent.

Q. You don't know how much of it he would spend, do you? A. Well, I would say if he worked on the right type of work he would spend sixty-five to seventy per cent of his time learning how to float a wall, plumb it up, square it up. And of course, all this pertains to floating.

Q. You are saying that if during the three-year period all the jobs he worked on were the type where the tile setters put the float coat behind the, what I call the setting bed, and you call the bonding agent, then he would spend fifty per cent of his time, isn't that what you are saying? A. Yes. No, I said sixty to sixty-five per cent.

Q. Sixty per cent. But that is assuming that he is going to be working on those types of jobs only for three years, right? A. Uh-huh.

\* \* \* \* \*

[S17] Q. Now, you didn't talk, or did you talk to the general contractor when you went out there? A. Did I talk to the general contractor?

Q. Yes, on the Westbury or Jeff Davis jobs. A. No, the superintendent on the Westbury School was, I spoke to him as I walked down the hall, but I didn't have any conversation with him.

Q. Oh.

Well, did you ask him, for example, at the Westbury School, that superintendent yesterday, if he knew of any other reason why that wall that you didn't like could have been out of plumb or out of square? A. No.

Q. Did you inquire of the plumber if perhaps he put his pipes in in such a way that the wall couldn't be plumbed?

A. Well, the plumbing, as I remember, was all stubbed out with about six-inch stubs on it, and there was no restriction at the ceiling that I could see, and the plasterer had, as far as I could see, he had about six inches if he wanted to to come out there to plumb that wall up.

Q. And, of course, it's your opinion that in a building there [S18] are no finished dimensions to make, if a plasterer want to bring the wall out six inches he just brings the wall out six inches, is that correct? A. Well, no, not in a sense.

Q. The architect will be quite upset about bringing a wall out six inches, wouldn't he? A. Probably so.

Q. Let me ask you this, when a job begins whose responsibility is it to strike a line to show where walls and doors are going to go? A. Whose responsibility is it to lay out the building?

Q. In effect to lay out the building, yes. A. I would say it would be the superintendent.

Q. The general superintendent, right. And he says this is where wall A is to go, right? A. Uh-huh.

Q. And door B, and so forth, right? And you are to work to where he puts the wall and where he puts the door, right?

A. Right.

Q. The tile setters, even when they are putting the thin-set method on and they are only putting the L. & M. over a wall prepared by another craft, they can make mistakes so that the wall isn't going to have that perfect finish that you insist upon, can't they? A. About like a paperhanger can make mistakes hanging paper.

Q. Well, if you want to take that comparison, have you ever seen paper that has been hung on a wall that didn't match up right and didn't look right. A. Yes.

Q. So then your tile setters can also make mistakes, can't they? A. Yes.

Q. I am glad to hear you admit they are human.

Now, in your travels yesterday did you go to any jobs where the tile setters only put the dry-set mortar over backing prepared by plasterers? A. Uh-huh.

Q. To check and see if the tile setters have made any mistakes? A. No.

Q. You didn't do that? A. They made mistakes, all right.

Q. Who, the tile setters? A. Yes.

Q. But you didn't make any list and take the measurements, did you? A. Well, they made their mistake by covering it up, really.

Q. Well, now, you heard what I said. In the other jobs did you go to see them and make detailed measurements about mistakes that the tile setters made? [820] A. Well, how could you determine what was a mistake? If the wall was out of square, out of plumb, it's going to throw the courses off. How could you tell whether he made a mistake or not?

Q. Well, now, you are telling me if the tile is already on and the job is finished you can't really be sure whose mistake it was, if it doesn't look good, aren't you? That is what you are saying, isn't it? A. No, I don't think so.

Q. You are not saying that. A. I can tell whether the foundation is straight or not, regardless of whether it's finished or unfinished. And the tile is going to be no better than the foundation behind it.

Q. You have never seen a tile job where the L. & M. wasn't mixed properly and it got a little bumpy back there

and when the tile setter put his tile over nice straight backing he made it wavy? A. I don't recall seeing this.

Q. You don't deny that it could happen, do you? A. I don't deny that it could happen, but he would have to try to do it.

Q. But then in that case it wouldn't be the fault of the person who put up the backing, would it? A. No, it wouldn't.

Q. It would be the tile setter, wouldn't it? [821] A. Yes.

• • • • •  
[823] Q. Now, you talked about the art of your craft as being the float coat, do you recall that? A. Yes, sir.

• • • • •  
Q. Now, you don't claim gypsum when you put up tile over gypsum, do you? A. No.

Q. That back-up can effect the way your tile looks, can't it? A. That's right, when they buy tile put on that way they get what they pay for.

Q. Right.

But if you put the gypsum up you could give them the type of job apparently that you say you give them if you put the Portland cement up, is that right? A. We could control the finished room dimensions.

Q. Well, you could give them the straight wall you claim you give them if you put the Portland cement up, too, couldn't you? [824] A. Probably so.

Q. But you make no claim for that, the gypsum? A. No.

Q. Do you know how gypsum is put on a wall? A. With a hammer and nails for the most part, in this area.

Q. You are talking about— A. Wallboard?

Q. Yes. How about gypsum plaster, how is that put on a wall? A. That is put up in plastic form by plasterers.

Q. How do they do it, do you know, what tools do they use? A. Mostly they use a blowgun.

Q. What other tools do they use? A. And they finish it with a hawk and trowel.



Q. What tools do you use to put it up when you use Portland cement? A. Hawk and trowel.

Q. Now, how about this little bubble thing you talked about? A. Pardon?

Q. This little thing with all the bubbles in it, the level.  
A. The level?

Q. Are the tile setters the only craft in the construction industry that use a level? A. I believe they are.

Q. They are the only craft? [825] A. Yes. The rest of them carry them, but I think they are about the only ones that use them.

Q. Now that you have given me that answer——

Hearing Officer: The record won't reflect that we were being funny here, I don't think, and——

Mr. Capuano: I certainly wasn't.

Hearing Officer: And I think we better be serious about this thing so that the record will be correct.

Mr. Capuano: I am.

Hearing Officer: Because it doesn't pick up inflections and so forth.

Q. (By Mr. Capuano) Now, are the tile setters the only craft that use a level? A. No, they are not the only craft.

Q. Carpenters use levels? A. Yes.

Q. Plasterers use levels? A. This I can't vouch for.

Q. You have never seen a plasterer use a level? A. I have on occasion.

Q. All right. Plumbers use levels? A. This I don't know.

Q. Bricklayers use levels? A. Yes.

Q. Now, you say the finished dimensions aren't available to [826] the plasterer.

Now, you weren't talking about the finished dimensions of the room, were you? A. Come again with that.

Q. You said on direct that finished dimensions weren't known to the plasterers on a job. A. I believe we qualified that, didn't we?

Q. How did you qualify it? A. I asked her if she was referring to the finished dimensions of the room or with the tile that was going to be used in the room.

Q. All right. I am sorry.

Well, let's take the finished dimensions of the room. You didn't mean that the plasterers don't know the finished dimensions of the room, did you? A. No, I don't mean that.

Q. All right.

They do know that as far as you know? A. Well, it's available to them.

Q. Sure, it is. And you were speaking only of the size of the tile right? A. Right.

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[838] Q. What do you mean by firm? A. Pardon me?

Q. You used the word firm before. A. In regards to what?

Q. In regards to mortar on the wall. A. Hard, in other words.

Q. Well, how hard is firm? How hard is hard. A. Well, it all depends on what you are going to put on it.

Q. Well, would you say a wall is firm after five hours? A. In some cases it would be more than firm. It would be hard or set.

Q. After five hours? A. Uh-huh.

\* \* \* \* \*

[841] Q. (By Mr. Capuano) Mr. McHargue, on this Anderson Library job what coat were the plasterers claiming? A. Pardon?

Q. On the Anderson Library job. A. They were claiming our float coat.

Q. All right.

Now, that was the, let's stay in the bathroom for a while, that was the first coat on the concrete or masonry wall and the second coat on the metal lath, is that right? A. Yes.

Q. And you put, the tile setters put on that coat? A. Yes.

Q. And this was the coat that the plasterers claimed, right? A. Yes.

[842] Now, did Longshore tell you those were the coats he wanted or that was the coat?

Pardon me? A. That is what I understood. Now, he didn't make any claims on the bathrooms, as I understand it.

Q. Well, you mean the bathrooms were finished by the time we had the strike, and so forth? A. When we had our first meeting out there was in in connection with the stair wells and the bathrooms were finished.

Q. Right, the bathrooms were finished at that time.  
A. Uh-huh.

Q. All right.

Let's take the stair wells, too.

You had a coat of mortar over the masonry wall, right?  
A. Right.

Q. And you had a scratch coat over the metal lath, then a second coat over the metal lath? A. Yes, that is in the metal partition.

Q. Right.

So there, too, he was claiming the first coat on masonry and the second coat on metal lath, right? A. Right.

Q. All right.

Now, did your International Union send you a copy or inform you—well, let me put it this way, did they send you [843] a copy of the Joint Board award of November 10, 1966? A. I believe so.

Q. Pardon me? A. November 10th? Yes, they sent me a copy.

Q. Did you get that around the date that it came down, in other words, in November? A. Well, I believe I got mine a little later than Mr. Longshore got his.

Q. All right.

That is P-3, and it's dated November 10th.

But you got it within November, anyway, won't you say?  
A. Yes, I would say.

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[847] Hearing Officer: On the record.

In a brief off-the-record discussion it's my understanding of our conversation that we can stipulate that Local 20, which is an affiliate—

[848] Mr. Shepherd: Subordinate.

Hearing Officer: Subordinate to the International—whatever the initials are—

Miss Thacker: B.M.&P.I.U.

Hearing Officer: Is bound to the decision of the National Joint Board, correct?

Miss Thacker: Yes.

Mr. Capuano: And, of course, so is our Local, Local 79. How about the Helpers Local, they would be, too, wouldn't they?

Mr. Shepherd: I think they would be.

Miss Thacker: I think they are.

Mr. Shepherd: Because we have a tri-party agreement with them from years ago.

Miss Thacker: They are bound through the national agreement. But there again they are not a craft, but then—

Mr. Capuano: They are part of the Building Trades.

Miss Thacker: But the Hod Carriers are not a craft, and they are one of the basic trades of the A.G.C., so you don't have to be a craft to be bound.

Mr. Capuano: So we are stipulating that all three local unions that are involved in this case are bound to the Joint Board, is that correct?

Hearing Officer: Is that right?

Miss Thacker: As far as I know, yes.

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[850] Q. And since we have already agreed that your local was bound by the Joint Board you did not comply with the Joint Board award, did you? A. I did comply with the Joint Board award.

Q. We just went over what work was in dispute. A. I know what we went over, but we put on one coat of mortar, which we are entitled to, and that is all we did, regardless of whether it was one or a dozen on there, we are entitled to the last, final coat.

Q. You are saying regardless of what the Joint Board says, [851] you are entitled to one coat, is that what you are saying? A. Well, yes.

Q. In other words, you have got this voluntary method for settling disputes, but you didn't like the way they decided that case so you didn't pay any attention to it? A. It says here that we are entitled to the final setting bed.

Q. That's right, but they did also say that the work in dispute, the coat you knew that was in dispute, was assigned to the plasterers, didn't it? A. Except.

Q. Well, I don't think we have to keep going back over this, but you told me, and I am sure I understood you, you knew exactly which coats the plasterers were claiming. A. That's right, they were claiming my coat.

Q. And then you got a decision which said the work in dispute, work the plasterers is claiming, shall be assigned to the plasterers. Now, that is pretty clear, isn't it? A. If you read it all.

Q. I have no objection to you reading it all. The last sentence says except the final setting bed. A. Except the final setting bed, which shall be applied by the tile setters.

Q. Well, did you write back to the Joint Board and say, "Well, clarify what you said"? [852] A. No, I told them the final setting bed was all we were doing on the job.

\* \* \* \* \*

[853] Q. Well, now, in this situation, I believe there has been testimony there wasn't room for two coats— A. That's right, so that makes it our work. They are excluding the plasterer, not me. There is a final coat on that wall out there.

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[856] Redirect Examination

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[857] Q. All right.

Now, moving on to another area, we are talking about the wet float coat and the dry float coat. Does humidity have anything to do with the drying of the mortar? A. Yes.

Q. I would affect it? A. Yes.

Q. Higher humidity, what effect does it have on the drying? A. The higher humidity?

Q. Yes. A. The slower it dries.

Q. So do you have any idea how the humidity normally runs in this area? A. Well, there is a certain time of the year that you can control your mud pretty well and, say, this month and next month, possibly. Then in the fall of the year there is another month or so in there that you can control it pretty well, September and October, or October and November. And the rest of the time it's either burning up or hanging wet.

Q. Are the buildings where you work usually air conditioned or heated when you are in there [858] A. No.

Q. So then humidity is a big factor in the drying of your float coat? A. The humidity and the back-up that you are working against, and it all depends on how the plasterer mixes his scratch coat and brown coat, and there are several different elements that could enter into it as to how your mud sits on the wall.

Q. These are all factors, you are saying, beyond your control? A. Yes.

Q. Beyond the tile layer's control. A. Yes.

\* \* \* \* \*

[861]

**James F. O'Connell**

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

#### Direct Examination

Q. (By Miss Thacker) Mr. O'Connell, how long have you been a tile contractor? A. About eight years.

Q. Are you a tile setter? A. Yes.

Q. Do you belong to Local 20? A. Yes.

Q. Are you a member of the Local Association of Contractors? A. Yes.

Q. Are you a member of the National Association of Contractors? [862] A. No.

Q. Are you bound by decisions of the National Joint Board? A. No.

Q. Would you willingly bind yourself to any decisions? A. No.

Q. Do you do all types of tile installation, conventional float coat or one coat and thin-sets? A. All types.

Q. What per cent of your business is conventional or one float coat? A. Eighty per cent.

Q. Eighty per cent. A. Yes. Is conventional?

Q. Yes, conventional or one coat. A. Twenty per cent.

Q. Twenty per cent.

So that then if the tile setters lost that coat in this award you would lose that work? A. Uh-huh.

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[872]

**Charles S. Strawn**

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

• • • • •

**Direct Examination**

Q. (By Mr. Capuano) Mr. Strawn, would you tell me what your position is, please? A. I am Executive Director of Texas Lathing and Plastering Contractors Association.

Q. And what is the Texas Lathing and Plastering Contractors Association? A. It is a trade organization composed of lathing and plastering contractors in the State of Texas.

Q. And you are the Executive Director, you say? A. Executive Director, yes.

Q. Now, Mr. Strawn, let me ask you this, how long have you held this position? A. Since September, 1952.

Q. I am going to show you what has already been marked in this case as Exhibit P-16 and ask you if you recognize it? A. Yes, I do.

[873] Q. Could you tell me what that is? A. This is a joint specification guide that was developed by the Texas Lathing and Plastering Contractors Association and the Texas Ceramic Tile Contractors Association, setting out the general specifications for lathing, plaster and ceramic tile applications.

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[874] Q. (By Mr. Capuano) Could you tell me, please, what initiated the bringing together these two associations which resulted in the publication of P-16? A. Perhaps general problems between the lathing and plastering contractors and the tile contractors occasioned by the fact that in many specifications the responsibility of the tile contractor and the plastering contractor were not specifically spelled out, and therefore when questions came up on the job after the job was bid and also during the bidding processes as to exactly what was covered by the specifications.

Q. Were there any other reasons that the two groups got together? A. That and the need, recognized need to establish standards that were acceptable to both the tile contractor and the plastering contractor.

Q. Any other reasons? A. If I—

[875] Excuse me. A. We first became acquainted with the tile contractors association and tile contractors through our mutual interest in selling and promoting lath and plaster, in lieu, particularly, of structural glazed tile. We found that in our sales promotional work the two-inch solid partition with tile wainscoating was more economical than the structural tile and therefore we actively tried to sell that type of installation.

In doing this work I became personally acquainted with Charley Montgomery in Waco who is very enthusiastic and energetic in his sales promotional work.

Q. Of what product? A. Of ceramic tile. He was a ceramic tile contractor.

Q. I see. And that is what brought it about? A. This, in our discussions—



Q. With whom, now, are you talking? A. With Mr. Montgomery and others in the tile contracting business, we felt that it was to our mutual advantage to try to work out specifications that were acceptable to both contractor groups and to the architectural profession.

Q. All right.

[878] Q. Did you also make any other arrangements with Mr. Montgomery around this time for a committee of tile contractors to meet at your convention? A. Yes, it was mutually agreeable that they would, a committee from the Tile Contractors Association would meet with our convention and discuss specifically the possibility of developing a joint specification.

Q. O.K.

Now, could you tell me who Mr. George Brueggeman is? A. Mr. Brueggeman is a lathing and plastering contractor here in Houston, doing business as Tobin & Rooney, is a past president of our association, and was active in the discussions on this specification.

[880] Q. All right.

Now, were there several meetings held between the committees from the two associations on this, to work out this? A. There were, specifically I remember the one in Houston, even though I was unable to attend the one in Houston. There was one in Austin. I believe we had two different meetings in Austin. And there was other correspondence passing back and forth, or work sheets, involved in the specifications.

Q. You mean drafts? A. Drafts between the contractors association and the tile contractors association.

Q. All right.

I show you what has been marked as—or let me ask you this, first. Did a time come when you sent out to your membership one of the proposed specifications? A. This is the letter you handed me just a while ago dated December 3, 1959.

Q. And what exhibit is that, P-20-G? [881] A. This is P-20-G.

• • • • •

Q. (By Mr. Capuano) Go ahead. A. This is a letter from Mr. George Brueggeman, who at that time was President of the Texas Lathing and Plastering Contractors Association, directed to TLPCA members, informing them of the committee meeting that was held in Houston and submitting some basic information that was developed at that time, and telling them that this was the beginning of the negotiations or the discussions, and inviting their comments and suggestions on the continuation of the work of the committee.

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[883] Q. (By Mr. Capuano) Before we get into this exhibit, do you [884] know whether when you sent your letter of December 3, 1959, out to your members, whether the Tile Contractors Association was notified that you were sending that out?

You will have to go back here. A. I believe so.

Q. This one here (indicating), P-20-G.

Do you recall whether they were notified that you were sending it out to your contractors? A. As I recall, it was agreed that we would each send it to our contractor members for their review and approval.

Q. The respective members? A. The respective associations would.

Q. All right.

Now, after this meeting you had in March, what else took place after that? A. The meeting we had in Austin in March you are referring to?

Q. Yes. A. We reviewed the work sheets and more or less firmed them up in accordance with the information furnished by the Tile Contractors and Plastering Contractors, and forwarded a copy of it to the Tile Contractors with a letter, suggested letter of transmittal as to how this specification in finished form would be transmitted to the architectural and specification professions.

[885] Q. All right. Is that what P-20-M is? A. Yes, it's addressed to members of the Plastering Contractors Committee and the Tile Contractors Committee, and we point out that the specification would not be transmitted by any or through either association but would be transmitted jointly, and we included for their review a memorandum addressed to the architectural professions and signed jointly by Mr. George Barnard, who at that time was President of the Texas Ceramic Tile Contractors Association, and Mr. Ray Taylor, who was President of our Contractors Association at that time.

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[886] Q. (By Mr. Capuano) Now, was there further discussion among your group concerning the specifications after that? A. After—

Q. After this. A. After that letter of transmittal went out?

Q. Yes, uh-huh. A. Yes, it was discussed among our contractors and the board members and in the meantime we had changed association presidents again, and perhaps like other things you get a little dilatory in completing projects, but when we got our new president of the association who was very interested in [887] going ahead and completing this thing since we had it practically in completed form, and getting it distributed, that was Mr. Joe Rourke, who was our new president, or president of our Plastering Contractors Association.

Q. All right.

So would you tell us what P-20-O is, then?

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A. This memorandum is dated August 1, 1961. It's addressed to Mr. Bill McHargne, who had again become president of the Texas Ceramic Tile Contractors Association, and Mr. Joe Rourke, who was the new president of our association, addressed to them by me, attaching a copy of the transmittal guide that had been corrected in accordance

with our previous discussions and a copy of the specifications agreed upon in joint committee meeting in Austin, March 13, 1960, and stating that if the letter of transmittal is O.K., had been cleared with Mr. Taylor and Mr. Barnard previously, and if it was satisfactory for the two new presidents for their signature, then we would proceed with the duplication and distribution of the specification that had been previously agreed upon, agreed upon by the committees from the plastering contractors and tile contractors associations. Q. Now, was the letter of transmittal, which you included with the guide specifications, similar to what has already been [888] introduced as— A. With the exception of maybe one correction.

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Q. (By Mr. Capuano) Now, I show you P-20-P, -Q and -R, and P-20-P and P-20-Q are each four-page documents, and are basically [889], the same, and I ask you if you recognize P-20-P, -Q and -R? A. Well, I will start with P-20-P. Well, first, when the final, when we were finally in agreement, I say we, the committee from the plastering contractors and the committee from the tile contractors, were in final agreement on the specification, we sent a copy of the final draft to the president of the tile contractors who was at that time Bill McHargue, and to our president, who was Joe Rourke.

Q. Is that the August 1, '61 memorandum we just had here, P-20-O? A. Yes.

Q. All right. A. In which we asked them to each of them initial each page of the specification so there would be no question about what had been officially approved by each organization. These copies were returned by each association, initialed by Mr. Rourke and Mr. McHargue, each page of the specification so initialed.

Q. All right.

Now, taking P-20-P first, there are the initials— A. J. E. R., Joe E. Rourke.

Q. All right. And those appear on all four pages? A. Correct.

Q. All right.

And on Exhibit P-20-Q—let me ask you this first, is [S90] P-20-Q, the typed material, the same as the typed material on P-20-P? A. It's identical. Identical.

Q. All right.

And there are initials on the bottom of that. A. B. B. M.

Q. And whose initials are those? A. Bill McHargue, who was president of the tile association at that time.

Q. And do his initials appear on all four pages? A. On all four pages, yes.

Q. All right.

Now, could you tell me what P-20-R is? A. This letter is dated August 2, 1961, addressed to me by Mr. McHargue. It's a handwritten note in which he tells me the secretary is on vacation so he will write it, himself, in which he returned signed copies of the guide specification and mentioned the fact that he thought it was a very good idea, and he hoped that architects appreciate the combined efforts of our two associations and specifically mentions the work that Charley Montgomery did on this, along with some counsel from Bill Love.

Q. O. K.

Now, I am showing you P-20-S, -T and -U.

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[S91] Q. And would you look at all three of those and then you can tell me what they are. A. This is P-20-S, -T and -U, and—

Q. Take the first one, S. A. All projects finally get around to money. This is a letter—

Q. Well, take S first. A. All right.

Q. That is the letter of August 4, isn't it? A. Dated August 4, in which I addressed a letter to Mr. Bill McHargue, thanking him for returning the specification, and telling him that we planned to run twenty-five hundred

copies, that approximately sixteen hundred copies will be mailed to architects along with the accompanying letter.

Q. That was the letter that had been agreed to? A. That had been returned previously, yes.

Q. Right. A. And telling him that we had already typed the envelopes to mail to the architects and the cost of the printing would be one hundred eighty dollars, and that I wondered if his organization, the Tile Contractors Association, would be interested in bearing any part of the printing expense.

[892] Q. All right.

And P-20-T?

A. Is dated August 8th, 1961, addressed to me from Mr. Bill McHargue, telling me that the matter of sharing the cost of the printing of the specification would have to be brought up at their board meeting, which would be in January of 1962.

Q. That is of the ceramic tile—— A. Ceramic Tile Contractors Association, yes.

Q. All right.

And P-20-U.

A. Dated August 11, 1961, addressed to Mr. Bill McHargue, by me, telling him not to worry about the cost, that we would go ahead and mail the specifications out and would still welcome any financial assistance that they might give us as a result of their board meeting.

Q. Now, did you handle the mailing of the specifications?

A. We mailed them and in this note I notified him that they had been mailed. We mailed seventeen hundred copies to architects and specification writers, and sent one hundred copies to Mr. McHargue for whatever distribution he wanted to make among the tile contractor members.

Q. Were they architects here in Texas? A. Yes, sir, only in Texas.

Q. Were some of them from the Houston area? [893]

A. All over the State of Texas.

Q. All right. A. They were mailed out in accordance with the registry of the Texas Society of Architects.

Q. All right.

Now, is P-16 a duplicate of what you sent out? A. This is what was sent out, signed by Mr. McHargue and Mr. Rourke, just as it is here, without any letterhead on it.

Q. You had no letter head on the one you sent out? A. No, no.

Q. All right.

Now, let's see, it was Mr. McHargue who said in P-20-T, I believe, that they were going to take up the financial question in their January, '62 meeting. Did there come a time when you received anything further from the—

A. Shortly after the Ceramic Tile Contractors meeting in January, '62 we received a check from the Tile Contractors Association in the amount of ninety dollars covering half of the printing cost.

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[900]

#### Cross Examination

Q. (by Miss Thacker) Mr. Strawn, what is the purpose of the association which you represent? A. We are a trade organization rendering a service, a membership service, to our members on business matters, contractual documents. Also we are interested in the promotion of the lathing and plastering industry, furnishing technical service to our members, and coordinating the work of our association with other industrial groups throughout the country, plastering groups throughout the country.

\* \* \* \* \*

[906] Q. (by Miss Thacker) Who were the members of the Tile Contractors Association that you met with on the committee? A. I do not have any record of their activity.

Q. Well, now, I notice here in P-20-G, you make reference here to certain—now, here again this is written from Mr. Brueggeman. [907] A. Yes.

Q. I notice here that you make mention of— A. Mr. Brueggeman makes mention.

Q. Yes. Makes mention of certain men here, Charlie Montgomery, Bill Love, Lee Munz, and a Mr. Young.

Now, who were these people? Were they on the Tile Contractors committee or who were they? A. I presume so. This was a meeting that I did not attend.

Q. You did not attend? A. Yes. And let's see, Mr. Brueggeman states he sat in with a representative of the Tile Contractors Association which included the persons you named.

Q. So you couldn't verify this, then. A. Mr. Brueggeman could.

Q. But you could not. A. No, I was not present. This letter was mailed by the association office for Mr. Brueggeman.

Q. Yes.

Well, now, then you didn't dictate this letter. A. I expect this was written in Mr. Brueggeman's longhand, made from notes at the meeting. Normally that way our association operates.

Q. Do you know this Mr. Young that they refer to here? A. I do not know Mr. Young, no. I do not believe I do.

\* \* \* \* \*

[914] Q. (By Miss Thacker) Now, Mr. Strawn, this guide, guide for specifications, this was prepared by whom, both associations or how did it come to be? A. It was prepared in joint committee meetings between the Plastering Contractors Association and the Tile Contractors Association. After drafts had been worked on on different occasions and mailed to the parties concerned, the final draft copy was prepared in our association office, the Plastering Contractors Association office, and forwarded to the officers of both associations for their approval and authority to print and distribute.

[915] Q. Now, you said to the officers of both associations. A. Yes, ma'am.



Q. Was there any presentation to the membership of both associations? A. To our membership there was. The Tile Contractors Association I have no knowledge of it.

[917] Q. But to your knowledge there were no actual demonstrations or trial runs made in this? A. In connection with this specification, that's correct.

Q. Now, to your knowledge was there any union representatives present or did they have an opportunity to participate in the preparation of this guide? A. The unions were not a member of these committees.

Q. Yes. A. And our International Union was furnished copies of it as a matter of information.

Q. The lathers and the plasterers? A. Yes, the Plasterers International Union, but they were not—

Q. Well, you also have contracts with the lathers. Were [918] they furnished copies? A. This specification did not particularly refer to the lathers or lathing operation.

Q. Well, it did insofar as the metal lath— A. That is normally an accepted presentation, yes.

Q. Yes. Now, you say this was referred to the Plasterers Union? A. Yes.

Q. Internationally or locally? A. To the International business, I mean their International representative, yes.

Q. Mr. Power? A. No, Mr. B. F. McClellan.

Q. Oh, Mr. McClellan, the International man for this area. I know him. A. Yes.

Q. All right.

Now, to your knowledge did the plasterers sit in on any of these committee meetings or make any recommendations?

A. To my knowledge they did not.

Q. Do you know anything about the tile setters, did they offer any information or data to your committees in connection with it? A. That I do not know.

[922] Q. Then would you say that in the writing of any specifications or any guides that it would be necessary to consider an agreement between the two crafts that you are dealing with? A. The guide specification that you refer to was developed by a joint committee of the Plastering Contractors Association and the Tile Contractors Association. It is a [923] specification for use of the architect in specifying building needs. A copy of the specification was furnished to the Plasterers International Union representative, and I do not know whether the Tile Contractors so consulted their representative.

\* \* \* \* \*

Q. All right.

Then are you telling me that your specifications, as far as you know, from the standpoint of your association, was made up without any conferences or any regard to the crafts that are involved? A. No, I can't say that.

Q. All right. Can you tell me, then, that they were?

Mr. Capuano: I believe he wanted to finish an answer.

A. Mr. McClellan was furnished a copy and his suggestions or the suggestions and recommendations of his international union were invited.

Q. (By Miss Thacker) Did he respond? A. I believe so.

Q. He went before your committee? [924] A. He did not appear before the committee. Neither did other members who had an opportunity to review the specification appear before the committee.

Q. What about the tile people? A. You will have to ask them about that.

Q. You don't know anything about that? A. No.

Hearing Officer: Let's define the tile people. Are you talking about the union or the association?

Miss Thacker: No, no, in this guide, Mr. Hearing Officer.

Hearing Officer: Well, I mean, you are talking about tile people. Are you talking about the Tile Setters Union or the Tile Contractors Association?

Miss Thacker: Yes, I am talking about the union furnishing any information.

Hearing Officer: O.K.

Q. (By Miss Thacker) And you say you don't know?  
A. That's correct.

Q. You don't know whether they did or they didn't. A. The information was furnished to the Tile Contractors Association for whatever distribution they deemed proper to make.

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[928]

#### Recross Examination

Q. (By Miss Thacker) Mr. Strawn, do you know if this guide has been approved by the membership of the Texas Ceramic Tile Contractors Association? A. I do not. Copies, one hundred copies were furnished to the Tile Contractors Association at the time it was completed.

Q. Did you send them out? A. Yes.

Q. You sent them out—— A. From——

Q. —from your office? A. In Austin, yes.

[929] Q. All right.

Was that the completed guide or the guide in its working stages? A. That was a guide after it had been finally approved by both associations.

Q. Now, what constituted approval by the Texas Ceramic Tile Contractors Association? A. It was sent to their president.

Q. By you? A. By the Austin office, yes.

Q. Yes. A. By the Contractors Association office.

Q. All right.

Now, you sent it to the president. A. Yes.

Q. Then what? A. And asked for the final approval of their association. He returned it with his approval and initialed each sheet of the master copy of the specification or the guide.

Q. Do you know whether it was submitted to the membership— A. I do not.

Q. —of the Texas Ceramic Tile Contractors Association? A. No, I do not.

Q. Did he make any, he, the president of the association, did he make any indication to you as whether or not it was [930] submitted to the membership? A. I do not recall that he did, no.

\* \* \* \* \*

**George H. Brueggeman**

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

[931]

**Direct Examination**

Q. (By Mr. Capuano) Mr. Brueggeman, will you tell me what business you are in, please? A. I am a lathing and plastering contractor.

Q. And what is the name of your company? A. Tobin & Rooney, Inc.

Q. And what is your position with Tobin & Rooney? A. President of the company.

Q. How long have you been with Tobin & Rooney? A. Since January 1st, 1946.

Q. Would it be fair to say that you are one of the larger plastering and lathing contractors in this Houston area? A. I am one of the larger ones, yes.

Q. Now, in connection with your business does your company prepare walls to receive tile? A. Yes, we do.

Q. And could you tell me what materials you use to do this? A. Well, depending upon the specifications, we, of course, as lathing contractors, if lath is involved we apply the lath, [932] and we do the scratch coat and brown coat either out of a gypsum plaster or out of a Portland cement plaster.

Q. Now, could you define for me the words plaster materials? What would that include? A. Well, plaster materials, as such, are cementitious materials and we use various products. Gypsum is one of them that is refined into a plaster and is generally regarded as plaster. But we also use to a great extent Portland cement plasters. As a matter of fact, I would say possibly forty per cent Portland cement plasters and around sixty per cent gypsum plasters. But we refer to them as plaster, both of them.

Q. You mean forty per cent of your business is the use of Portland cement plaster? A. Yes.

Q. Could you tell me how Portland cement plaster is applied to a wall? A. Well——

Q. I mean the tools used, for example. A. Well, if it's a hand application it's applied with a hawk and trowel. If it's a machine application it's pumped onto the wall and rodded off and screeded.

Q. Could you tell me how gypsum plaster is applied to a wall? A. Exactly the same way.

[933] Q. Now, could you tell me if you have jobs, particularly individual jobs, where tile is applied on the same job over both Portland cement and gypsum plaster? A. You mean on the same job tile being applied to Portland plaster as well as gypsum plaster?

Q. Yes. A. Yes, there are jobs, for instance, we go into, say, bathroom areas in which we would apply gypsum plaster to which tile is applied, and in, say, the shower area or the tub area, itself, we would apply Portland cement plasters. In a case like that both materials would be used in the same, say, given bathroom area.

Q. I see.

What craft would apply this gypsum and Portland plaster? A. Plasterers.

Q. Do you have a collective bargaining agreement with the Plasterers Local 79 here? A. Yes, we do.

Q. And this work would be included within that agreement, the work you are—— A. Yes.

Q. Now, could you tell me after your company through its plasterers applies—let me ask you this first, if tile is going to go on a wall in one of your installations, what coat or coats of plaster will your company apply? [934] A. Basically if we are going over metal lath we would apply a scratch coat and a brown coat.

Q. And then what would come after that for the tile? A. Depending upon the specifications, if it were a thin-set application they would apply a coating of thin-set material and then their tile. If it's conventional, they would apply a setting bed coat, of, oh, approximately three-eighths or something like that, and then apply their tile to that setting bed. In other words, the setting bed is acting as the bond between the materials.

Q. I see.

Now, when your company is installing the—well, let's define these coats, now. The first coat would be the scratch coat and the second coat that you put on would be what?

A. Would be the brown coat.

Q. Would be the brown coat. Would that also be the plumb coat, too? A. Yes, it's referred to as a plumb coat.

Q. All right.

Well, now, when your company is applying the brown coat to walls that are going to receive tile in the thin-set method, as you described, could you tell me if any other crafts besides the plasterers have ever made claims upon you for this work? A. On thin-set, now?

[935] Q. Yes. A. I don't recall—let's see. Thin-set.

Q. In other words, for your brown coat. A. I don't recall in a thin-set application of any claim. I think we have had—again I am not real familiar—

Q. Well, I mean to you, so far as you know. A. Well, for instance, take one of the—shall I name names as far as jobs?

Q. Sure. A. I am thinking of the University students center. We were putting up what was called for in the specifications as a plaster, solid plaster wall. We scratched the

metal lath. We intended to brown it, and there was a dispute over the brown coat. I don't know whether this was going to be thin-set. According to my reading of the specifications it was going to be a conventional set. But I am not positive one way or the other whether it was going to be or whether it was applied thin-set. I didn't follow the job through.

Q. Well, leaving that one dispute aside, have the tile setters ever made any claims upon you for the installation of your brown coat? A. Actually when I have it in my specifications I have never been involved with the ceramic tile union. They have never claimed, they have never tried to get me to use their employees.

[936] Q. O.K.

Now, do you operate in the Houston metropolitan area?

A. Yes, I do.

Q. And you operate in other areas also, is that true?

A. Yes, I do.

Q. All right.

Now, could you give me, if possible, a few jobs where you have installed at least a brown coat of mortar, you may have installed a scratch coat behind it, but at least a brown coat of mortar, where tile was then installed by a tile contractor over your brown coat with one of these dry-set mortars in the thin-set method? Can't you think of some jobs offhand? A. Oh, there are many jobs that we have applied. I could go all the way back to, well, Methodist Hospital would have been one.

Q. Is that in Houston here? A. That is in Houston here.

Q. Approximately when? A. Well, we have been on three different jobs there over the past seven to ten year period in which we have applied——

Q. You have applied the brown coat? A. Yes, uh-huh.

Q. And the tile setters have come in and used a thin-set mortar to apply their tile? [937] A. Yes.

Q. All right.

Can you think of another job? A. Fannin State Bank Building, as I recall, was the thin-set method. It's a little

bit difficult for me to tell you what are thin-set and what are—because we take them up to the brown coat, and other than that I really don't follow through to know whether they are thin-set or conventional sets after that.

Q. But you do at least put the brown coat on? A. We put the brown coat on.

Q. Now, could you tell me in which section of the specifications the the brown coat of mortar is generally included? A. Generally the brown is included in the lathing and plastering, I mean, in the plastering specifications.

Q. And do you bid on it then? A. We bid on it then. And even in cases where it is not, and there are cases where it is not, we bid it as an additive or alternate. In other words, our base bid is x number of dollars and if we do the brown coat add x number of dollars to our base bid is the normal procedure we use.

Q. Now, how many years did you say you have been in business here or associated with this company? A. Since '46.

Q. Since '46? [938] A. Uh-huh.

Q. Now, could you tell me in your experience since 1946 what would be the area practice in this Houston metropolitan area for the preparation of walls with Portland cement where tile is going to be installed over them after your brown coat of mortar is dried? Which craft would you say has the area practice of installing that brown coat? A. The plasterers to my knowledge have installed it all times unless there was an argument on it, and I would say at least in ninety-nine per cent of the cases that the brown coat has been installed. I am talking about commercial work, the type of work I am involved in.

Q. Yes. A. Residences I know very little about.

Q. Yes, commercial work. You say ninety-nine per cent of it has been installed by the plasterers? A. In the jobs that I have worked on.

Q. Yes.



Now, could you tell me if you have ever had complaints from tile contractors about the workmanship that your employees do in preparing the walls for tile? A. From tile contractors?

Q. Yes. A. Yes, I have had some. It's been more prevalent, I would say, in the last, you know, few years.

[939] Q. Is there some reason for this? A. Oh, basically, and again this is a personal reason for it as far as I am concerned, to me it looks like there is a trend for the ceramic tile union to be wanting to do this work as opposed to a plastering journeyman doing it, and if there is any reason that the thing is not done exactly to their liking, they make a mountain out of a molehill, to use an expression. But it hasn't—we haven't had very much of this. I can see a trend that way a little bit, though.

Q. Now, could you tell me whether you have ever seen tile setters, craftsmen tile setters, apply Portland cement to walls? A. Yes, I have, for the setting bed. Is that—

Q. For the setting bed of tile. A. For the setting bed of tile, yes.

Q. And you have seen plasterers do it, I assume. I don't mean the setting bed. A. Not the setting bed. I have seen them apply the scratch coat and the brown coat, yes, many times.

Q. All right.

Can you tell me from your experience in watching both crafts which craft is more skilled in performing this work? A. Well, as far as the scratch coat I don't think I have ever seen ceramic tile men ever do that. It is really done all the time by the plastering union journeymen.

[940] Q. Take the brown coat. A. The brown coat, actually that is the type of work we do all the time is wall work, and I would say that a plasterer will do quite a bit more of it, that is the type of work that he is more involved with in his every-day work. Whereas, the ceramic tile man, I would say that he does equally as good a job as we would do as a plasterer, but he is involved with floors as well as

walls, and there is a little bit different knack of doing it, and I would say the plasterer is more proficient in it.

Q. He could cover a larger area, is that what you meant?

A. Yes. But quality-wise I would say that they do as good a job as we would do, as far as quality is concerned.

Q. Now, getting back to a typical commercial job, say in a bathroom, would you tell me, assuming you have got both gypsum, say you have got a tile wainscoting around and then gypsum walls above that. Would that be a typical installation? A. Yes, it would.

Q. All right.

Would you tell me how your company or crews would go about doing this work in there, assuming you are going to do the brown coat behind the tile? A. If it's over metal lath, of course we would apply to the entire wall area the scratch coat, first of all. Then we would——

[941] Q. Wait a minute. Now, you said the entire area. You mean the walls behind the tile and—— A. The walls behind the tile and the plaster would be done, that would be the first thing, to scratch out the walls.

Q. It would be done in one operation, you mean? A. Well——

Q. I mean at one time you would do the whole wall? A. Well, for instance, we are involved sometimes with a complete scratch coat of Portland cement, in which the whole wall will be done at the same time, and that is generally the way we do it. There are specifications that the architect might specify a scratch coat of gypsum behind a brown coat of gypsum.

Q. I see. A. In which case we would scratch the Portland cement, then scratch the Gypsum plaster. Then the next application would be the brown coat behind the ceramic tile, and then the brown coat over the gypsum, and then a finish coat over the gypsum, and then we would be finished with our part of the installation and leave it for the tile man to do his installation. And there are times, too, according to the specifications, where the tile might precede our final coat of gypsum.

Q. You mean the white coat of gypsum, which would be your final? A. Yes, the finish coat.

[942] Q. Well, up to that, assuming the specifications call for your white coat of gypsum to be applied after the tile, would you have already put in your brown coat of gypsum— A. Yes.

Q. —and brown coat of Portland on it? A. Yes, the brown coat application would have been finished.

Q. I see.

Now, could you give me some examples of where you as a plastering contractor used Portland cement other than as a back-up for tile? A. Oh, there's many—for instance, usually on the interior and the exterior of walls of buildings are done out of Portland cement plaster. We do a lot of stucco on the outside of buildings as far as the wall areas are concerned. We get a lot of overhangs, you know, the soffits on the outsides of buildings, which are all Portland.

Q. Are they called canopies sometimes? A. Canopies and soffits. We are extensively involved in marble-creting on the outside of a building which is all Portland cement products, in which we imbed marble chips into the final coat.

Q. Would you have it in shower rooms? A. Yes, we would have Portland cement in shower rooms. Wet areas, we use Portland cement in wet areas.

Q. Do you use Portland cement where it's going to be the [943] finished application also, in other words, without a covering of tile? A. Yes, we do. We do it both ways, you know, gypsum, for instance, Keene cement, we use as a finish coat over the Portland cement, and we also use Portland cement over Portland cement.

Q. What is Keene cement? A. Keene cement is a high calcium gypsum.

Q. What does that do, give it a hard finish or something, waterproof finish. A. It's more impervious to water than, say, the regular gypsum.

Q. I see. I believe you said you were also a lathing contractor— A. Yes.

Q. — as well as plastering? A. Yes.

Q. Does your business as a lathing contractor bring you into contact with the construction of walls? A. Yes, it does.

Q. Could you tell me how, in what manner? A. Well, generally as a lathing and plastering contractor we feel that we are wall and ceiling applicators, and we promote all the time the use of our product in walls and ceilings.

[944] Q. Well, what would you do in connection with the building of a wall as a lathing contractor? A. Well, if this were a wall here, I would probably have a door frame there and I would set up either a steel stud of channel or wire stud of some type, put metal lath or gypsum lath on both sides.

Q. In other words, you would— A. And scratch, brown and finish.

Q. In other words, you would build the wall right from scratch, is that what you are saying? A. Right from the beginning.

Q. Including the studding in it? A. Yes.

Q. Now, do you also build, as a lathing and plastering contractor, solid partition walls? A. Yes, we do, but it's done very much the same way. We use a three-quarter inch channel as a stud, lath one side and put five coats of plaster on the walls.

Q. What is that, on both sides, you mean? A. On both sides.

• • • • •

[946] Q. O.K.

Now, I show you what has been marked P-23 for identification, and I ask you if you can tell me what that is, by name. A. Well, it's the same type of specifications as this P-21 except that instead of covering, as this one does, gypsum plaster and interior lathing and furring, this regards [947] Portland cement plastering, Portland cement stucco.

Q. I see. A. And is put out by the same people.

Q. You mean— A. By the architects and testing lab, American Society for Testing Materials.

Q. All right. And the American Standards Association, is it? A. American Institute of Architects and American Society of Testing Materials. It's approved as a standard by the American Standards Association.

Q. All right.

Now, could you tell me if there is some document that you as a contractor would refer to as a standard when you wanted to check on a particular product or method of installation? A. Normally where this comes into being is in specifications as written by the architect. He tells us that we are supposed to do a certain item, say plastering, according to the following conditions, sand has to meet specification so-and-so as described in here, the gypsum—

Q. Described in where, now? A. Described in these books.

Q. You mean the American Standard Specifications? A. Yes.

[948] Q. In other words, the architects refer you to them, is that correct? A. Yes.

Q. Would you know whether they are a commonly accepted standard for your industry? A. Oh, this is used more than our own Texas lathing and plastering specifications or even our national specifications because it's more generally known and accepted.

Q. You mean the American Standard Specifications? A. The American Standard is, yes.

Q. Do you know if they publish standards for other materials and installation of other construction? A. I believe they cover the entire range of building construction.

Q. I see. O.K.

Now, Mr. Brueggeman, I am going to show you what has been marked as Exhibit P-16, has been received in evidence as P-16. And ask you if you are familiar with that? A. Yes, I am.

Q. And could you tell me what it is? A. Well, it represents a specification that was jointly worked on by the Texas lathing and plastering contractors association and ceramic tile contractors here in Texas.

Q. All right.

And were you a member of the committee that at least [949] started to work on this when you were president? A. When I was president I was an ex officio member of the committee, yes.

Q. And did you participate in any of the meetings leading up to that specification? A. Yes, I attended the one at the Ben Milam Hotel here in Houston.

Q. There was one held in Houston. A. In Houston. And one in Austin.

Q. All right.

And were there various drafts that were exchanged back and forth concerning this before the final was approved? A. Yes, there were.

Q. All right.

Now, I am going to show you exhibits which have been received, P-20-D and P-20-G, and ask you to look at those for a moment. A. Yes, I am familiar with them.

Q. All right.

Now, were those documents sent out under your direction? A. Yes, uh-huh.

Q. Both of them say that they are from you, is that correct? A. Yes.

Q. And they were sent under your direction? A. Yes.

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[950] Cross Examination

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[955] Q. All right.

Now, Mr. Brueggeman, in the last two or three years have you done more thin-sets than you did before? By thin-sets I mean more preparation of walls for thin-sets than you did prior to that time. A. In the last two years or three years?

[956] Q. Yes, in this period of time, now, that you state that this effort has been afoot, have you done more jobs where you have put in the back-up for thin-sets than you did before? A. No, I wouldn't say so. I would say that the thin-set is a little bit on the upgrade all the time. In other words, assume there was a period of fifty per cent conventional and fifty per cent, I would say we would be now up to sixty and seventy, maybe even up to eighty, in other words, going more to thin-set applications.

Q. Now, your brown coat, do you scratch it? A. On thin-set, no. On conventional we will if we know that he wants it scratched, the tile contractor.

Q. You ask him? A. As a rule.

Q. Now, getting back to this other thing we were talking about, and that is your information on the art of tile setting, do you, at the time that your men put in the brown coat, do you have available to you or are you familiar with the tile installation that is to come? A. Well, normally a plasterer foreman on the job has to read the tile specifications pretty much the same as he does the lathing and plastering. First of all, he has to find out that the architect hasn't made a mistake. He has to find out whether it's going to be thin-set. He has to find out the thickness of the tile that is going to be used. [957] And generally speaking while the general contractor superintendent gives us a lay-out of all rooms that lay-out indicates the finished wall, and we have to know pretty much how we are going to get out to there. In other words, do we leave one inch, a half inch, three-quarters of an inch? And we have to talk to the tile contractor and talk to him as to his installation.

\* \* \* \* \*

[958] Q. Now, as a construction man you understand and appreciate how the courses of tile have to be laid out and how the joints have got to be straight and how the dimensions may be altered through the joints and in different manipulations. A. Uh-huh.

Q. Do you feel that you would be sufficiently qualified to make, to finish a wall in your brown coat with this object in view, this tile installation, without knowing all of these things that are involved? A. Well, the foreman on the job should know as much about it, say, as the ceramic tile man, who is going to make the installation, if he knows the materials that he is going, that the ceramic tile man is going to use. In other words—

Q. Does he have those available to him? Does he have the tile available to him at the time he is putting up his brown coat? A. Sometimes he does and sometimes he doesn't, but he should talk it over with the—

Q. If he doesn't have it could he finish the room properly, if he doesn't know it? A. Not unless he knows what the system is, he couldn't, he would have to find out.

\* \* \* \* \*

[961] Q. Now, do you feel that there's perhaps a greater amount of skill required in the application of this brown coat, as you call it, where it is to receive tile than where this brown coat is then for you to put on your finished plaster? A. I didn't follow that quite—if—

Q. Do you feel that there is a greater skill required in this brown coat, as you call the coat in dispute, if it is going to receive tile than it would be if you put a brown coat on this wall, which you were going to ultimately plaster? Is there a difference? A. There isn't a difference except you have to be more exacting.

[962] Q. You have got to be more exacting. Why? A. Because ceramic tile doesn't bend in any way.

Q. And you have got courses to— A. That's right.

\* \* \* \* \*

[965] Q. And what is the name of the coat in issue that the tile setter and the tile contractor calls it? A. Well, I am not exactly positive, to tell you the truth, because of the fact that it gets—they use a little bit of terminology that we don't use. In other words, I use scratch, brown,



setting bed. Now, they have got a float coat [966] in there which to me could be either the setting bed coat or the brown coat. And frankly I don't know. Now, to me there can't be a question about the leveling coat behind a thin-set method. I don't think we have ever had a problem in this town based on that brown coat nor have we argued about that particular one under thin-set. We do get involved, frankly, I know of one at the University of Houston, I know of the problem we had at Rainbo Baking. The one at the University of Houston there was extenuating circumstances. We applied our scratch coat. We wanted to apply what we called our brown coat. The tile setter said "I don't have room for you to do it." And there was a problem of room because the concrete stairs were laid a little bit out of kilter for our wall coming down between the two stairways. On the Rainbo Baking I don't know how the job was done. But on thin-set, where we have solid walls, we even permit tile under thin-set to go directly to another type of wall, concrete block, and so on. It goes over gypsum board every day. We just question, as far as I understand the arguments that we have been having, the leveling coat or as we would call the brown coat behind.

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[968] Q. (By Miss Thacker) Now, Mr. Brueggeman, do you always scratch your brown coat? A. No, we do not always.

Q. Are you scratching it any less now than you used to scratch it? A. Before thin-set method came into being, we did scratch what we would call our brown coat to receive a setting bed. With the advent of thin-set and whenever we have a thin-set application, we do not scratch it.

Q. Why? A. Because you don't need the scratch as far as I understand to get the bond. That is what the bonding material is doing. [969] With a Portland cement setting bed you actually need a mechanical bond. With the chemical bonding agent you don't need that.

Q. So that are you telling me that if you scratched your brown coat you couldn't apply the bonding agent? A. Oh, no, it would just mean that you would be using more of it and it would serve no purpose.

Q. Can the bonding agent be put on thick? A. I think there are restrictions as to how thick it can be. It's put on relatively thin. Generally in the area, I would say, of an eighth of an inch as opposed to three-eighths.

Q. But generally in order to apply the bonding agent you have got to have a smooth surface? A. You don't have to have a smooth surface as far as I know. Again this is getting in the field beyond me. This becomes—

Q. Well, you are a plastering contractor and brown coats are generally scratched, aren't they? A. No. For instance, in plastering brown coats are not scratched.

Q. Well, now, Mr. Brueggeman, are you aware of the green book? A. Yes, I am aware of the green book.

Q. You are familiar with this 1917 agreement? [970] A. Yes, we referred to the 1917 agreement when we discussed this specification that we had.

Q. So then you know what it says? A. No, I don't know exactly. I would have to refer to it to know what it says.

Q. Well, would you read it over to yourself while I am finding something? A. (Witness complied.)

Uh-huh.

Q. What does this agreement have reference to? A. It has reference to who does what in the application of ceramic tile under the conventional set.

Q. Well, what does this say right here (indicating)? A. Preparation of walls and ceilings to receive tile.

Q. And who is this agreement between? A. Between the O.P. & B.M.P.I.U.

Q. Do you know of any other agreements the two crafts have made? A. No, I don't know of any other that the two crafts, themselves, have made. There may be others, but I am not familiar with them.

Q. Now, insofar as the work of the plasterer is concerned, does it say how many coats he has? A. It doesn't mention any number as far as I can read here.

Q. It doesn't say whether he has had one coat or two coats, [971] does it? A. No, but it implies, at least, one more coat than one.

Q. Where does it say that, Mr. Brueggeman? A. Well, because it says they shall plumb, rod and square all walls.

Q. Well, now, where does it imply that there is to be a second coat there? A. Because you cannot do this in a scratch coat. You need a firm backing of some type. That is the purpose of the scratch coat, to give you a firm backing on which you can square out a wall and plumb it. You cannot possibly do it in a scratch coat. It's wet material. It wants to run down the walls. And we have to have a firm backing so that we can rod or plumb or square a wall. It's just not possible to do it with a scratch coat. When we get finished with a scratch coat there are variations of at least three-eighths of an inch, and that is why the second coat is required for plumbing. With a wet material you can't square a wall.

Q. What does it say the tile setter is to do? A. Actually the way I am reading it it doesn't tell him to do anything.

Q. Does it say what coat he is to put on? A. They shall plumb, we are talking about plasterers, plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat. The final coat would [972] be put on by the tile layer.

Q. All right. A. Uh-huh.

Q. Now, would there be anything wrong with him doing the final plumb, rod and square? Is there anything in there that says he can't? A. Well, it says here the O.P. is supposed to plumb, rod and square and the tile layer shall put the final coat on, which would be the setting bed or mechanical, I mean, the chemical adhesive, thin-set method.

Q. Well, now, you see, the reason I am asking you this is that you tell me that it's tacit in this agreement that the

plasterer has two coats, is that correct? A. When it goes over metal lath he has to have two coats.

Q. Is there anything in here that says it's over metal lath? A. No.

Q. All right.

You tell me, though, that it's tacit that he has two coats, the plasterer has two coats. A. When it is put over metal lath he has to have two coats in order to plumb. Now, over a concrete block wall or a masonry wall he would only need one coat, which would be the plumbing and rodding and squaring of all walls.

Q. Now, does it say in here what the final setting bed that [973] belongs to the tile setter, what is to be done to it? A. It just says the final coat shall be put on by the tile layer to act as a bed for his tile.

Q. And it doesn't say anything about what he is to do to it, does it? A. No, it doesn't, as far as I can read.

Q. All right.

Then the final responsibility, then, rests with the tile setter, doesn't it? A. He has to in most specifications guarantee the workmanship on his, of his job, but at the same time most specifications carry a clause that all walls shall be inspected by him prior to installation, and if there is anything wrong with them call it to the attention of the architect.

Q. Yes. A. Which is normal in most relations between subs.

Q. Now, would you think that in the installation of his final setting bed that then he would do the final plumb, rod and square, to remove all inequalities? A. On conventional he would have what he would call his setting bed, and I would call his setting bed, that would act as a setting bed for his tile, and at that time he can, if he—he will do it with, oh, wooden lattice strips, and so on, or metal lattice strips. He can.

Q. Then—

[974] Mr. Capuano: Let him finish, please.

A. He can do it.

Q. (By Miss Thacker) Would it matter, then, whether the plasterer would plumb, rod and square it if he is going to do that? A. On a conventional set the work of the plasterer wouldn't have to be as accurate for conventional as it would for, say, thin because there is another opportunity to pick up any differences with his bedding coat.

Q. Then the plasterer wouldn't have to put on two coats, would he? A. Well, again, yes, he would. On metal lath he would have to put on two coats, a scratch coat in order to stiffen up the wall, that he could put on the coat that would square, plumb—what other terminology do they use?

Q. Rod. A. Plumb, rod and square.

\* \* \* \* \*

[976] Q. (By Miss Thacker) Now, Mr. Brueggeman, do you see any differences in this original agreement, as we have here in the green book—I note this agreement in the green book is between unions. These two letters are the views of a few men—

Mr. Capuano: Oh, now stop characterizing that, would you?

Q. (By Miss Thacker) —of the Joint Board.

Mr. Capuano: Just ask him questions about it.

Q. (By Miss Thacker) Now, do you see any differences in these decisions, these two decisions, in the original agreement? A. I can't see.

Q. You can't? A. No.

Q. Well, let's go over it, now. Let's look here at the agreement. It says here—what does this say here as to the plasterers? A. They shall plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat.

Q. All right.

Do you see in here anywhere, either one of these two decisions, where it says the plasterers are to do that? Show [977] me. A. Well, it says here in the thin-set method of

applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar, that is, the scratch coat and plumb coat. The plasterers shall plumb, rod and square all walls. They are using the same terminology here.

Q. Do they say scratch? A. Plumb, rod and square. Plumb, rod and square.

Q. And what? A. And scratch.

Q. Do you see it here? A. No, but they are referring to a thin-set here in which you don't have to scratch.

Q. Does this agreement have anything to do with the thin-set? Does it say anything in here about the thin-set?

A. No, the thin-set was not in existence back in 19—what is that, '17?

Q. That's right. A. Yeah.

Q. I know it wasn't.

But this is the conventional method, isn't it? A. That is conventional.

Q. All right. A. And in the conventional method you do have to have a mechanical bond. In other words, that is why we scratch in the [978] plaster. That is why we scratch, you know, the brown coat here. Portland to Portland you have to have a mechanical bond.

Q. With the scratch? A. With the scratch. That is what that scratch is, to furnish a mechanical bond between the two Portland cement applications.

Q. All right.

And is that the reason for the scratching, so that he can put on his final coat? A. So that his finished coat, I mean, final coat or bed setting coat—

Q. Yes. A. —will mechanically bond to the brown coat that has been applied.

Q. All right. That has been deleted here. A. He has been referring, as I see this letter, only to thin-set. I don't think he is referring to conventional.

Q. Do you know of any agreement that the two unions have had on thin-set? A. I know of no agreement other than this.

Q. Other than this. A. In other words, this is exactly like that. I think you are making an issue of this word scratch.

Q. That is one of them. [979] A. As compared to what we refer to as our first coat being scratched, this is referring to the scratching of the brown coat, so that there is a mechanical bond between the two coats of Portland cement plaster.

Q. All right. Then the brown coat is your second coat?

A. The brown coat is our second coat.

Q. All right.

And you scratch it so that then the tile setter, when he puts his coat on there will be a mechanical bond? A. When he puts on his Portland cement setting bed coat, which is in normal applications roughly three-eighths of an inch thick, as opposed to a thin-set, which is roughly an eighth of an inch or maybe less, it's a chemical bonding agent as opposed to a mechanical bond that is required.

Q. Now, does it say anything here in this 1917 agreement about what the materials are that the plasterer uses? A. It is agreed that the plasterers shall use only sand and cement in the preparation of the work above stipulated.

Q. Does it say anything about what the tile setters should use? A. I don't see it if it does. Does it say it here somewhere that I don't read?

Q. No, I haven't seen it. A. No.

Q. There is nothing in this 1917 agreement, then, that [980] alludes to the thin-set method? A. Not as far as I can see.

Q. So then this is the thinking of the Joint Board on what the crafts should do, is that correct? A. No, they are interpreting that to a new condition.

Q. To a new condition? A. To a new material, rather than a new condition.

Q. To a new material? A. Uh-huh.

Q. All right.

Then are they changing anything in it? A. I don't think they are.

Q. They have eliminated scratch. A. They eliminated the scratch, word scratch there, because here they were dealing with Portland cement. Here they are dealing with a chemistry bond, a chemical bond.

Q. Now, look over here on this March 15. Do you see any—do you say this is exactly the same as the agreement? A. I haven't noticed a difference. There may be one that I haven't been able to weed out, but I can't see it.

Q. What about this second paragraph here? A. It's telling him, it's telling the tile journeyman that if he sets his tile the same day he can do this work.

Q. He can't, he cannot do it? A. No, he can.

[981] Q. If he sets it— A. If he sets it the same day.

Q. Is there anything in this 1917 agreement which limits him or tells him when he can set his tile after he puts on his setting bed? A. Not to my knowledge. It may be there. Let me read.

I think this is something that was given to him at some period between 1917 and the present date.

Q. What do you mean given to him? A. As between the two unions as to an agreement to let him do this brown coat work or float coat work or bed setting work, if he covers it up with tile the same day.

Q. Now, you are saying you think this is an agreement between the two unions? A. This is something that at least in this area that is recognized by all of us as being their work if it's covered up the same day. Area practice, I should say. I am not sure what it is nationally. But it's been our area practice to let the tile setter do it all if he is going to—

Q. Well, now—

Mr. Capuano: Let him finish his answer, please.

Q. (By Miss Thacker) Now, you are saying—

Mr. Capuano: No, let him finish his answer.

Q. (By Miss Thacker) You are saying that the tile contractor—



[982] Hearing Officer: Wait a minute.

Q. (By Miss Thacker) —then—

Hearing Officer: Wait a minute.

Read that question back prior. Let him finish his answer.

(Record read.)

A. Cover it up the same day.

Hearing Officer: It's area practice, then, so far as you are concerned, to let the tile setter do the work so long as he covers it up the same day?

The Witness: That is what I conceive our area practice to be.

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[987] Q. (By Miss Thacker) Now, does this mean that he can't put it up if it's dry?

\* \* \* \* \*

A. My interpretation of what Bill Cour is saying here is that the tile setter can apply the cementitious materials behind his ceramic tile if he does that cementitious work the same day that he applies the tile. That is my interpretation of his wording.

Q. All right.

Then that means that it's wet, that the setting bed, that it's wet? A. What are you getting at, wet?

Q. What he is putting the tile on. A. I don't think it has any significance as to whether it's wet.

Q. Well, now, if he says he can't do it except the first [988] day, would it be dry after that? A. It would be dry after that and the bond would be lost.

Q. What bond would be lost? A. Well, I don't know—this is his letter, but I do know, and all ceramic tile people and plasterers know that you get a better bond if you go over a second coat the same day.

Q. What is this again, now, the second coat? This is your coat? A. No, I am referring to any type of cementitious material, whether it's done by a cement finisher, a

tile setter or a plasterer, that you get a better bond when you go over it, it's more monolithic.

Q. You mean when it's wet? A. When it's wet.

\* \* \* \* \*

[989] Q. (By Miss Thacker) Well, you qualified yourself certainly as a plastering contractor and an expert on plaster. Now, then, in your operations where you have got a plasterer involved, and you have put on your brown coat, which is your gypsum coat— A. You are talking to me as a plastering contractor, doing plastering?

Q. Yes, I am talking to you as a plastering contractor, and you have put on your brown coat which has gypsum in it, usually, doesn't it? A. Uh-huh.

Q. Suppose you are doing, then, a picture mold or a ceiling mold or an ornamental mold, can you put your white coat on when your brown coat is wet? A. You are talking now about gypsum plaster?

Q. Yes. A. If I am putting on the finish coat of plaster, gypsum plaster, over gypsum plaster, it is better for me to do it [990] while the brown coat is still wet.

Q. You can do— A. If I am putting on a finish coat that is a hard troweled surface, I should do it after the brown coat is dry, thoroughly dry.

\* \* \* \* \*

[992] Q. Now, you know that as a plasterer, don't you, that in this second set of situations, this second set of facts, that you can't put on your white coat when your brown coat is wet and successfully, don't you? A. I know what good practice is, let's put it that way.

Q. Yes. And you know there are certain things that are involved that you can't do it, don't you? A. To get a representative job.

Q. All right.

Do you think somebody else should come in and tell you, Mr. Brueggeman, that you have got to do it when it's wet?

Answer it. A. I have it done every day to me.

Mr. Capuano: He has given you an answer.

Q. (By Miss Thacker) By whom? A. By the general contractor.

Q. What happens then when you do it? A. I follow his instructions.

Q. What kind of a job do you have then? A. I have a good job, but I have to change my operation in doing it, that is all.

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[998] Q. Did you have any representatives at this meeting from the two crafts involved? A. Oh, let's see, I am just trying to think. I don't know for certain. I was here in Houston in the Ben Milam Hotel as part of our committee, made up of lathing and plastering contractors, meeting with a committee from the ceramic tile contractors, and there was a man introduced to us, and I made the minutes of the meeting, I made notes, I didn't copy verbatim word for word, but Mr. Young was introduced to me as one of the tile setter representatives from Oklahoma. And other than that I don't remember the man. But I do know that the man represented to me, represented himself as being with the tile union and from Oklahoma. Other than that I couldn't—

Q. Did he participate in any of the sessions? A. To my knowledge, no. He was here on other business.

Q. He did not? A. And observed what we were trying to do in Texas.

[999] Q. Then you got together this guide without any real consultation with the two crafts, isn't that right? A. I would say that is correct.

Q. You would say that. A. Yes.

Q. Were you aware of this agreement between the two crafts? A. We used this as a guide. In other words, when we tried to draw up—may I have a copy of that?

Q. Yes, surely. Here it is, P-16. A. To the best of my knowledge we used this green book and area practice and tried to develop a combination of exactly what was going

on at the present time. It was not anticipated that we were changing, really, anyone's jurisdiction.

Q. Who were the members of the Tile Contractors on this committee? A. Who? I remember Mr. Love, Mr. Montgomery. I believe Adolph Martini sat in the meeting here in Houston or was there for a while.

Q. Did Mr. Love and Mr. Montgomery have any interest other than as tile contractors? A. I have no idea what their particular interest was.

Q. Are they manufacturers of L.&M.? A. I believe they are tile contractors. I am not positive of this.

[1000] Q. They had a product to sell, L.&M.? A. They didn't have a product to sell to us, no.

Q. But they were on the committee that set up these guide lines, two manufacturers of a bonding agent? A. Yes, they manufactured L.&M. and they were both on the committee sent to us by the Ceramic Tile Association. Why they were picked by them I don't really know.

Q. Do you know if the guide before it was finalized was sent out to all of the members of the Tile Association and approved by the membership? A. Oh, after it was approved by our committee I believe our contractor sent the thing out for perusal by all of our members.

Q. Of your members? A. Yes. Now, what they did on their side of the fence, all I ever knew about it is that later we did receive from them a signed copy and a letter that was thanking us for assistance in the matter.

Q. But you don't know what action was taken— A. No, I don't know.

Q. —in their association? A. No, I don't know.

Q. Now, Mr. Brueggeman, I believe you said that in connection with this area practice that you state in the tile, in connection with the tile installation, your source of [1001] information was your own men, is that what you said? A. Our source of information was our committee as set up by the Texas Lathing and Plastering Association. We picked, as I recall, a man from the Valley, a man from Beaumont.

Q. Of your own association? A. Of our own association.

Q. Then you don't have any direct knowledge of the practice in the tile industry from tile contractors? A. Do I personally or—

Q. Yes. A. No, sir.

[1002] Q. Can you tell me what any tile contractor has told you what his practice is? A. The people who sat down with us in this meeting told us. Were in agreement as to what the practice in the area was.

Q. But you haven't had this information of what area practice is given you by any particular tile contractor that [1003] you can name? A. Well, the people who sat in on the meetings—

Q. They were manufacturers, you told me.

Mr. Capuano: Now, that is not accurate of his testimony.

A. Two manufacturers.

Q. (By Miss Thacker) Yes. A. Two of them. Well, actually they are tile contractors, to my knowledge.

Q. Yes. A. They represented themselves, that is what they represented themselves as being, now. Other than that I didn't go up to their place of business and actually go and look at their jobs. They said to me, "I am a tile contractor," and from what I knew of them they were tile contractors. They also manufacture, two of them did, materials used in tile application.

[1007] Redirect Examination

Q. (By Mr. Capuano) Could you tell me, Mr. Brueggeman, whether, since this agreement, specification, guide specification, P-16, has been in existence, whether it has in fact been followed at least in the Houston area here by architects? A. Well, all the architects in Houston were

given one or more copies of this as a guide, and I would assume that they are using it because most of the specifications adhere very closely to the way this is set up.

Q. Thank you.

Now, in the thin-set method or when one of these dry-set mortars is going to be used in the thin-set method, does your brown coat have to be plumb? [1008] A. On the thin-set?

Q. Yes. A. It has to be plumb, yes.

Q. And it had to be plumb in the conventional method, right? A. Right.

Q. And what does plumb mean? A. It has to be flush up and down.

Q. Straight, in other words? A. Straight.

Q. And level means horizontal, is that right? A. Yes.

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[1009] Q. Now, let me ask you this. On, for example, metal lath, when tile is going to be installed in a thick mortar coat, you will put on a scratch coat and a brown coat, correct? A. Yes.

Q. Then the tile setter will put on the thick mortar coat, is that correct? A. Yes.

Q. And what is that called? A. To me it's a setting bed.

Q. All right.

Now, the thin-set method has come in, right? A. Uh-huh.

Q. And take the same situation, over metal lath you will put on a scratch coat and a brown coat, correct? A. Yes.

Q. And then the tile layer will put on another coat and then his tile, correct? A. He will put on the chemical bonding agent or whatever you want to call it.

Q. What would that be called, the coat he puts on? A. It's the setting bed.

Q. The coat he puts on? A. Yes.

Q. Now, on the thin-set method over concrete walls or masonry of some sort, you would put just a brown coat, is [1010] that correct? A. Just a brown coat.

Q. And then the tile layer would apply one of the thin-set mortars and his tile, is that correct? A. Yes.

Mr. Capuano: I don't have anything else.

#### Recross Examination

Q. (By Miss Thacker) Did I understand you just now, Mr. Brueggeman, to call the bonding agent the setting bed for the tile? A. Well, as far as my recollection of what we are doing, and again over metal lath, we apply a scratch coat. The next thing we apply is a brown coat. Then there's two ways of adhering to our brown coat, that is, either with conventional set, which requires Portland cement to bond, and to bond to our brown coat, or a chemical, such as L.&M. thin-set or whatever the material might be called, also serves the same purpose as that Portland cement setting bed, so it would be a setting bed.

Q. What is the source of your information that the bonding agent and the float coat put in by the tile setter is one and the same? A. They are not one and the same because they are different materials, but we have two coats that we do, the scratch and the brown. The tile setter either puts on Portland cement, [1011] which you could call a setting coat, or he puts on a chemical bonding agent, which could also be called the setting bed, in other words, that is what sets the tile to the brown coat. That is the terminology I am using.

Q. Do you know any tile contractors or tile setters that call the bonding agent a setting bed?

Mr. Capuano: Now, I am going to object to that. I can't possibly see the relevancy of that, whether they do or they don't call it that. She asked him his opinion and he told her.

Hearing Officer: I will overrule your objection. If he knows he can answer.

A. What was the question again? I didn't quite follow it.

Q. (By Miss Thacker) Have you ever heard any tile contractors or tile setters call the bonding agent the setting bed for the tile? A. No, I haven't.

Q. Where did you get the term, then, or why do you call the bonding agent the setting bed? A. Well, because the two are serving the same purpose. They are both bonding tile to our brown coat.

\* \* \* \* \*

[1013] Q. Now, you put on your brown coat. The tile setter puts on his float coat or his setting bed. Does he put the tile directly onto that? A. If he is in the conventional set, when we finish our brown coat, he then puts on, in conventional set, about three-eighths of cementitious material, Portland cement, or masonry cement, and he applies his tile to that.

Q. Without any bonding agent? A. He is not using a chemical bonding agent. That to me is the bonding agent.

Q. All right. This is the conventional method? A. Conventional, yes.

Q. All right.

[1014] Now, then, in the thin-set you are calling the bonding agent the setting bed, is that correct? A. It's serving the same purpose as that three-eighths inch Portland cement.

Q. In your opinion? A. In my opinion.

Q. Now, I believe you said that in area practice that the architect's specs. primarily had the bids going to the plastering contractors for the brown coat on thin-set. Is that your statement? A. That is my statement.

Q. Do you see all of the architects' specs. that's made in this area? A. I see every bit that we make as we make it, and before we make it, and in all cases where they are in our specs., where the brown coat, and I am using our terminology, is in our specifications, we bid it.

Q. Yes. A. Now, when we find that it is not there, we go looking for it, and if we find it in the ceramic tile speci-



fications, we bid it as the specifications say, our base bid is x number of dollars, but you have the brown coat in the ceramic tile specifications. We think that the plasterer will have to do it, and such being the case, if you want us to contract for it, add x number of dollars to our base bid.

Now, I don't look at the specifications, but I would [1015] say that at least ninety-five per cent of the time it's in our base bid.

Q. Of the ones that you see? A. Of the ones, of the jobs that I bid.

Q. But you don't see all of them in the area? A. We have three estimators that cover about ninety per cent of the work that is done in the plastering business. In other words, if there is ceramic tile in a job that involves plaster, then we see ninety per cent of them.

\* \* \* \* \*

[1016] Q. I see.

Will the tile go on, Mr. Brueggeman, if the bonding agent isn't put on or if it isn't buttered? A. I don't know.

\* \* \* \* \*

[1017] **Marion Linder Saylor**

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

#### Direct Examination

Q. (By Mr. Capuano) Mr. Saylor, could you tell me who your employer is, please? A. Mr. K. F. Doerner.

Q. Is that the Doerner Plastering Company? A. Doerner Plastering Company.

Q. And what is your position with Mr. Doerner? A. I am Mr. Doerner's superintendent, field superintendent.

Q. All right.

And are you a plasterer by trade? A. Yes, I am.

Q. And how many years have you been in the business?  
[1018] A. Approximately nineteen years.

Q. O.K.

Now, in connection with your work as a superintendent do you regularly visit jobs that Doerner is working on?

A. Every day.

Q. Every day. All right.

Now, have you had under your supervision jobs where walls have been prepared to receive tile? A. Almost every day.

Q. All right.

Now, could you tell me the name of some of the jobs that you have been on which have included the preparation of walls to receive tile, particularly with Portland cement first? If you have got jobs where gypsum was used, just distinguish them for me. A. Well, most of mine is with cementitious material.

Q. Portland? A. Portland cement, yes. And we or I had supervision over the St. Anthony Home for the Aged, the Diagnostic Clinic.

Q. Is that all one job? A. No, there's two jobs.

Q. All right. Let's take the St. Anthony job. When was that, approximately? A. Oh, we finished it up six to eight months ago.

Q. All right. Was that in the Houston area here? [1019]  
A. Yes, it is.

Q. And what did you do on that job, the plasterers, I mean? A. Scratched and browned.

Q. And tile was installed over that? A. Tile was installed.

Q. And do you know how tile was installed over that?  
A. On a setting bed.

Q. All right.

Do you know what type of setting bed was used there?  
A. Oh, I am not, the trade name I am not sure of. It was one of the bond, the setting bed materials that they use now.

Q. These thin-set? A. Yes, thin-set, L.&M., Crest, Kaiser, one of the trade names.

Q. I see. A. I don't know specifically which one was used to install the tile.

Q. All right.

Now, and you say the plasterers did the scratching and browning there? A. Yes, they did.

Q. Where did you have this wall preparation, in other words, what areas of the— A. Well, in all of the bath areas, and there was one to almost every room, and the morgue and wherever tile was used.

[1020] Q. All right. A. In the kitchen area, a tremendous amount in the kitchen area.

Q. O.K.

Now, your brown coat, let me ask you this, in relation to the time or the date you put your brown coat on, when did the tile setters apply their setting bed and tile? A. Well, they started about three months after we got the first one browned.

Q. O.K. What was the other job you mentioned? A. The Diagnostic Clinic.

Q. Where is that? A. That is on Main.

Q. Here in Houston? A. Yes.

Q. When was that job, approximately? A. Well, along about the same time, somewhere, give or take a month or two, about six months ago.

Q. All right.

And was the type of installation basically the same as you just described? A. Basically the same, yes, sir, in regards to what the plasterer did it was the same.

Q. It was the same? A. It was the same.

[1021] Q. Was tile installed then with one of the thin-set materials? A. Yes, same day.

Q. All right.

Can you think of another job? A. Rice Kitchen.

Q. Rice Kitchen? What is that? A. A kitchen for Rice Institute, which was—

Q. Was this— A. A very large tile job.

Q. Was that a separate building, this kitchen? A. Yes, it's a building in itself.

Q. All right.

And it was a large tile job there, you say? A. A large tile job.

Q. And what preparation did your plasterers do on that job? A. We scratched and put the brown coat up plumb, square and true.

Q. And then the tile setters applied their tile? A. Then the tile setters come in some weeks after we had started and put their tile in.

Q. With the thin-set again? A. Yes.

Q. All right. Can you think of another job? A. Savoy-Field.

[1022] Q. That is a hotel? A. That is a hotel.

Q. Approximately when was that? A. Oh, about four months ago I think we completed that.

Q. And could you tell me, was that installation similar— A. The installation was the same.

Q. O.K.

If you can remember the name of the tile contractor on any of these jobs I would appreciate your mentioning it. A. Mr. Martini on the Casa de Maria, which is the St. Anthony. Mr. Martini on the Diagnostic Clinic. I am pretty sure it was Mr. Martini on the Rice Kitchen.

Q. O.K. Any other jobs you can think of offhand? A. Oh, yes, we have got four or five going presently. We have got NASA Building No. 37. We have Foley's.

Q. All right. Let's take NASA Building now. Is the installation there the same or— A. It's yes, we are scratching what metal lath is there, and then we are browning all of it in its entirety, and the tile setters are coming with their bed coat, putting it direct. It's thin-set method bed coat.

Q. And what is this, Foley's, you say, now? A. Foley's.

Q. What is that job? A. Now, the tile setter hasn't started. I have browned about [1023] half of the bathrooms but the tile setter hasn't started yet.

Q. All right.

Same method of installation? A. Same method of installation. We are waiting for the bricklayer to complete his work at the present time.

Q. Then they are going to put their tile directly over your brown coat with this thin-set method? A. That's correct.

Q. And what is another job? A. The University of Houston Engineering Building which we finished up to the last month or two.

Q. Is that the same method? A. Same installation.

Q. And do you recall the tile contractor on that job? A. Which one was it?

Q. The Engineering Building. A. Engineering Building? Martini.

Q. O.K. Can you think of another job? A. Texas Southern University.

Q. What did you do there? A. Scratch and brown, plumb coats, for the tile setter.

Q. And was that a particular building at Texas Southern? A. It's the Library Building addition.

Q. O.K. When was that job, approximately? [1024] A. A year, maybe.

Q. Same thing, the tile was going to be installed thin-set? A. Right.

Q. Can you think of another job? How about Luby's Cafeteria? A. Yes, Luby's Cafeteria.

Q. And is that here in Houston, too? A. That is here in Houston.

Q. Was that about 1965? A. Somewhere around there, yes, sir.

Q. And was that installation the same as— A. Same basic installation.

Q. How about Methodist Hospital, do you remember that? A. Yes. That was a rather large tile job that we did. I

am not certain. I believe it was Martini on that job, too. I am not certain. I couldn't—

Q. Well, that is all right. Was that in about 1965, too, here in Houston? A. Yes.

Q. Pardon me? A. Yes.

Q. Did you perform the same work as you described? A. The same work, put the plumb and scratch coat up for the tile.

Q. O.K.

How about the Olson Building, do you remember that? [1025] A. The Olson Building, yes.

Q. Is that here in Houston? A. Yes, it is.

Q. Where did you have the back-up for tile then? A. In the bathroom areas.

Q. O.K. Is that an office building? A. Office building over on Kirby.

Q. Approximately when was that? A. That's about a year or so ago.

Q. O.K. And the method of installation? A. Scratch and brown for the tile setter.

Q. On some of these jobs did you have wire lath in all of them? A. No, I am sorry, did you want me to identify the fact that they did have metal lath or whether they were on masonry or what? Some of them—pardon me.

Q. That is all right, go ahead. A. When you have masonry you also most generally have chases and things that you have to furr with metal lath, which you could have a combination of both in all of these instances.

Q. All right, sir. A. Quite a number of them have specifically metal lath.

Q. So, in other words, you would have how many coats, if you had masonry, how many coats would you have? A. Well, one coat, one plumb coat.

[1026] Q. I see. Then two on the metal lath, is that what you are saying? A. That's right.

Q. O.K. How about Pittsburgh Plate Glass, do you recall that? A. Yes, that is—

Q. Is that in Houston, too? A. Yes.

Q. What was that, an office building? A. No, it's an addition to their—well, yes, I am sorry, it is, it's an addition to their office building.

Q. Approximately when was that job? A. Oh, about six months ago.

Q. All right.

And the same type of installation that we have described?

A. Same type of installation.

Q. Do you recall who was on that job, the tile contractor?

A. No, we had cleaned up and left the job, I think, before the tile contractor ever got there.

Q. O.K.

How about Rohm & Haas Chemical Company, do you recall that one? A. Uh-huh, that was a job down on the Ship Channel that we did.

Q. Is that here in Houston, too? [1027] A. Well, in this area.

Q. O.K. And approximately when was that? A. Two years ago, possibly, something like that.

Q. Same type of installation? A. Same type of installation.

Q. How about St. Thomas Biology Building, do you recall that? A. Yes, uh-huh, that was on masonry, I remember that, that was at the University of St. Thomas.

Q. Is that in this area, too? A. In this area.

Q. Approximately when was that? A. About a year and a half.

Q. How about Texaco Office Building? Oh, excuse me.

How about A & M College? A. Uh-huh, we just, oh, about six months ago completed that.

Q. And is that in this area, too? A. Well, yes, that is at Bryan and College Station, about ninety miles from here.

Q. Oh, is that within the jurisdiction, do you know— A. It's within this jurisdiction.

Q. O.K. Same type of installation there, too? A. Same type of installation there.

Q. How about the Humble Research Addition? [1028]

A. Yes, that is at the Humble Research Lab, and it was the same installation.

Q. And is that in this area, too? A. Yes, it is.

Q. And approximately when was that job? A. About a year.

Q. And on all these jobs the plasterers did this browning?

A. The plasterers did the preparatory work for the tile.

Q. All right.

These are jobs you have done for Doerner? A. Yes, for Mr. Doerner.

Q. How about the Center Pavilion? A. Yes, that is a remodel job that we did that was about four or five floors, and we had to do the scratch and brown for the tile there.

Q. And when was that, approximately? A. Well, we did two different jobs for them. One of them we finished about four months ago. The one prior to that we did about a year or so ago.

Q. Same type of installation? A. Same thing, yes.

Q. How about Humble Service Center, H.L.&P.? A. Yes, that is at Humble, Texas, in this area.

Q. It's what? A. It's at Humble, Texas. It's Houston Power and Light [1029] Company auxiliary building, and we lathed, scratched and plumbed for the tile setter, brown coat and plumb for the tile setter.

Q. Is that within 79's jurisdiction, too? A. Yes, uh-huh.

Q. How about the Houston Club? A. Yes.

Q. What was that job? A. It was remodel of the eighth, ninth and tenth floors.

Q. And when was that, approximately? A. It's kind of finishing up now. We have got a little more work to do down there.

Q. Do you recall who the tile contractor was on that? A. No, I really don't, to be truthful.



Q. Can you recall any other jobs where you did the back-up for tile other than when you were employed by Doerner?

A. That is calling on my memory pretty good, but I was with Mr. Duckett for, associated with him for about seven years, and we did First City National.

Q. What is that, an office building? A. And schools. I beg your pardon?

Q. Is that an office building, First City National? A. Yes, it's an office building.

Q. Here in Houston? A. Uh-huh.

[1030] Q. What type of installation did you have there of the tile? A. Well, basically all these things I am telling you were where we scratched and browned preparatory for tile.

Q. All right. Tell me, can you think of any other job by name while you were working for him? A. There were so many of them, you know what I mean, after so long a time they just run together. I mean—

Q. You have had others, though? A. Oh, yes, the Towers, Bank of the Southwest Towers, repair work over at Memorial Professional Building.

Q. Both of those were the same type of preparation, too? A. That's right. School jobs, you know, the names, I know the locations and everything, but as far as putting a name to them I can't.

Q. That is all right. I understand. O.K. A. Oh, a couple of Spring Branch High Schools. This is when I was with Mr. Duckett.

Q. O.K.

Now, have you during your nineteen years experience, have you ever seen tile setters apply a mortar setting bed in the conventional method? A. Yes.

Q. And how thick would they normally apply the mortar setting bed in the conventional method? [1031] A. Normally, I would say, about three-quarters of an inch, sometimes. I mean, if you are talking about they are doing it conventionally, is this what you are saying?

Q. Yes, conventionally. A. They do it about three-quarters of an inch, whatever it takes when they strip it out and set it.

Q. And you, of course, have seen your plasterers install your brown coat, is that correct? A. Yes, that's right.

Q. Now, could you from your experience give me your opinion of the comparative skills of the two crafts in the installation of the mortar coat, that is, the plasterer's brown coat and the tile setter's conventional setting bed.

A. The two skills between the two crafts?

Q. If one craft is better than the other or— A. Well, we are not confined with just using a level and a square in a bathroom. We have to use it on jobs in other places, cabinets and so forth and so on, where they are going to have cabinets installed later. Our men use a hawk and trowel eight hours a day.

Q. You are talking about plasterers? A. Plasterers. When I say our men I am talking about plasterers. And I think just the fact that they use the tools more would make them some little bit more proficient with the use of the hawk and trowel and possibly a level [1032] and a square.

Q. All right.

How about with regard to the speed or the amount that can be covered in— A. I believe because of the continued use of the tools plasterers just can get over it faster and do just as good a job. I mean, they are used to handling mortar all day long, not handling mortar for, say, two or three hours and then stopping and setting tile for the rest of the day. Elimination would just almost declare that to be a fact.

Q. Now, on the jobs where you have been the superintendent have any officials of the tile layers union or any members of that union ever claimed from you the installation of your brown of mortar? A. No, they haven't.

Q. Now, could you give me the method in which, describe for me how your plasterers would install a brown coat of mortar on, say, a masonry wall? A. You are talking about

in relation to setting tile on it, preparatory to setting tile or just—

Q. Yes. A. Well, we will assume, then, it's possibly in a bathroom. Well, there are several factors to be taken into consideration when they go to setting or browning for the tile setter. The plumber has got certain receptacles, pipes and so on, [1033] and so forth, that are protruding from the wall, and he has to have a fixed location for the setting of his plumbing fixtures at a later time, after the tile is installed. So we have to acquaint ourselves with what his needs are, the reveals that are going to be on the door bucks, we have to acquaint ourselves with that. We have to acquaint ourselves primarily, or first, I should say, with the thickness of the tile, what is going to be the requirements as far as the tile setter is concerned, how much is he going to have to have for the total thickness of his setting bed and his tile, and the dimensions of the tile, and then we go in there with this information, we go in there and lay our screeds out and fill them in, rod it, level, square it, just check it from every aspect.

Q. All right.

Now, when you go in to do this, are these pipes that you talked about already installed? A. Yes, we run into trouble sometimes when—I have lathers under my supervisions sometimes, and when we go to a job everything that is on the print isn't exactly in the same relation, somebody could have had a larger pipe, maybe, or location was changed, and we have to work back from there.

Q. How about door bucks, would they be installed when you started installing the plaster? A. The door bucks could or could not be, but this door buck [1934] is generally set by the general contractor, and he is charged with the responsibility of the location of the door buck.

Q. How about things like window frames, would they be set when you started? A. Well, they, yes, they could be set when we start or a lot of times our tolerances are such that we have to work and then they just slip a prefabricated window into place. With everything with off-the-job fab-

rication, different things occur at different times. In our business nowhere is there just a set rule now that a person can go by because they have to adapt theirself to every job.

Q. You say prefabricated windows that they slip into place. What do you mean by that? A. Well, there's a lot of times that the plastering work is complete and they will just set a whole unit in and tie it in and calk it.

Q. Well, will you have to know whether it's going to be prefabricated when installed, when you are putting up your work? A. Yes, you would have to know that. You would have to make an allowance for them to just put the window right in place.

Q. I see.

Are there any other prefabricated products? [1035]  
A. Cabinets, they make these cabinets, they have got fixed dimensions on marble tops. They have to just fit right in place. These things are mostly made by cabinet shops completely off of the job and are brought in truckloads and then set on the job to be put in place.

Q. Then they have to be set right in the wall? A. Right in the wall, and they have to fit.

Q. All right.

And when you are installing your brown coat, then, do you take these things into consideration? A. These things all have to be taken into consideration. In the event that there is something wrong on the job, if there is a chase out, then you have to go to the job superintendent, talk it over with him, maybe he will even go to the architect, get the information from him to move these walls, to take all this into consideration before you can do your preparatory work for the tile.

Q. When you go on a job are there any room dimensions that you must meet besides this prefabrication business we talked about? A. Yes, there's room dimensions given on most all of your architectural plans.

Q. And what do they disclose, those room prints? A. Well, in the toilets you will have toilet partitions. You

will have towel holders. All these dimensions have to be [1036] worked with. They have to be taken into consideration.

Q. You mean the architect will tell you where these things will be? A. Well, he has got them drawn on his print. Now, if there is a conflict in what you find and what he has got drawn, then you will need further counseling on it. Other than that you comply with what is on the print.

Q. Now, in connection with your work preparatory to the installation of tile do you confer with any other crafts or contractors? A. Oh, yes, we work, we work with all the crafts on the job. In our particular trade we are more or less starting the second phase of a job when we get on the job insomuch as we are starting to put the first finish work in. We are covering up the mechanical contractor. We are covering up and working with the electrical contractor. We are working with the tile setter. We are working with just everybody.

We start to tie a building together, so to speak, after the framework is up, and the mechanical is in, we start to put the finishing touches on it.

This necessitates close cooperation between everybody because actually our finish work is part of what they see, what they sell.

Q. Now, in connection with your position as superintendent [1037] have you received any complaints from tile contractors about the workmanship of your men? A. You mean has a contractor called my attention off the job or made a call to my office that this work wasn't up to par or something like that?

Q. Yes. A. No, never have I had a call come to the office where I was at with that to me, or even one of my employers. Now, there could have been a possibility on the job there was a pipe out and we had to build a wall out or something, or there was a slight imperfection and the tile setter or somebody could have come and asked us to fix it, and we would do that on the job. Then I wouldn't prob-

ably know about the imperfection or something in the wall that could be corrected in, say, five or ten minutes, I wouldn't be, maybe, aware of it.

Q. Is that a typical job condition? A. Typical job condition?

Q. Well, what I mean is this a job circumstance that you run into on jobs? A. Well, yes, I think more than anything else.

Q. You have this with other trades besides the tile setters? A. You have this with anybody in the construction business. I mean, everybody has got tolerances that they have to work within. I mean, I don't think any of the men under my [1038] supervision have ever told anybody that if there is a slight imperfection that they wouldn't be more than glad to take care of it immediately, not put anything off, lengthening it for a period of time.

Q. And do other crafts have to make corrections for your plasterers? A. Most assuredly. An electrician or anybody could put the wrong light ring on and he would have to come out and tear a hole. The plumber could have his plumbing wrong and have to come tear a whole wall off or part of a wall, to move it. This happens, has happened to everybody. People in the construction industry accept this.

Q. Now, could you give me a couple of examples of where plasterers must work to close tolerances other than, say, behind tile? A. Well, anywhere they are going to have a cabinet brought in on the job that is square.

Q. This prefabricated business we were talking about? A. Prefabricated, off the job, maybe San Antonio, Dallas or some other cabinet shop, and they are going to bring it down there, they may have three hundred fifty of them that are going to go in a hospital job, and they are going to set it in a corner. Then you have got close tolerances. Ornamental work you have got close tolerances.

Q. Ornamental plaster work, you mean? [1039] A. Ornamental plaster work.

Q. How about ceilings with modulated tiles? A. And corridors of buildings, the architect could call for full tile and then you have to work to that full tile.

Q. You mean the ceiling? A. Uh-huh, in the ceiling.

Q. And how do you work to that full tile, in other words, how do you get your work so that it will fit full tile? A. By leveling it and rodding it, plumbing it.

Q. Squaring the rooms? A. Yes, squaring it. You have got to know his dimensions and work back from his dimensions.

Q. Now, take a typical office building job. Would you have gypsum plaster on top of tile wainscoting? A. Yes, you could have, or you could even have a gypsum ceiling over that. You could have various means, you know, they could be gyp four feet on up to eight foot six inches high and then plaster ceiling in the room.

Q. Well, let's take the situation, do you ever have anywhere you are putting Portland cement to be covered with a tile wainscoting and then gypsum wall? A. Yes, I don't have presently, but I have had numerous ones in the past.

Q. All right.

Well, give me your mode of operation in how your men [1040] would perform their various tasks in that job, in that type of installation. A. We like to go in, naturally, and scratch it, and then we will brown it.

Q. What part would you scratch? A. Well, we would scratch it with Portland cement up to the wainscot line. Then we would scratch from there. And if the ceiling was plastered we would scratch that. If it called for gypsum we would scratch it with gypsum. Then we would go back and brown the tile work first. We would square the room and brown and plumb for the tile work. And then he would immediately go on up, if it would allow us to, if the mechanical and everybody was in, brown the wainscot on up, brown the ceiling, and the most practical way for everybody involved, then, is to finish it and clean it up and get your scaffold out. Then when the tile setter comes in



we are not forced to work behind him, and he is not forced to work behind us.

When you move scaffolding over tile work or something like that, there is a chance that it could be chipped or cracked, and then you have got a hassle on the job.

Q. You say when you would finish yours. What do you mean by finish yours? A. Well, we would put the finish coat on. I mean, we would brown it and finish it and put the finish coat on, and [1041] then the tile setter could come right in and put his setting bed on there and go about his business.

Q. Well, you see, the record doesn't know what you mean by a finish coat. You are talking about a finish coat of gypsum? A. Finish coat of plaster, sand coat, white coat, sand plaster, whatever the specifications call for.

Q. That is above the wainscoting? A. That is above the wainscoting.

Hearing Officer: I guess this area above the wainscoting, now, is not to receive tile, is that it?

The Witness: No, sir, I am sorry, we are saying, he said gypsum plaster. I am assuming, then, that there would be no tile on that. It would be a white coat finish or textured finish or sand finish, various means.

If we can do this above the wainscot, then, and finish it out, then the tile setter is free to come in there. As soon as he is free, done his work, then the plumber can come in and get on it and finish the job up.

Q. (By Mr. Capuano) Now, perhaps we better clarify it. By wainscoting what do you mean? A. Well, four, five, six foot wainscot, and then from that point up to the ceiling line.

Q. You would have gypsum plaster? A. Anything below that is, the terminology is wainscot.

[1042] Q. I see. And below that would be the tile and above that would be the gypsum plaster finish? A. Would be plaster, yes.

Q. Now, could you tell me in connection with your job as superintendent what percentage of the jobs that you



do in a year include doing the brown coat or back-up for the installation of tile in the thin-set method? Do you understand the question? A. Yes, I believe I do. I am just trying to run it over in my mind and see. Oh, the ones that I am involved in I would say about eighty-five per cent of them.

Q. O.K.

Now, could you also tell me from your experience what percentage of jobs done in this area on the back-up for tile, that is, the installation of the mortar coat, where the tile is done, or where the tile is installed after your mortar coat has dried, in the thin-set method, what percentage of these jobs do the plasterers do, install the mortar coat? Do you follow me? A. What percentage of the jobs in the area or—

Q. Yes, in this area, from your experience. A. Isn't that the question I just answered a minute ago?

Q. No, I asked you what percentage of your jobs include back-up for tile. Now I am asking you— A. Oh, I beg your pardon, I misunderstood the first one. [1043] The ones that include back-up for tile.

Q. Well, let's go back to that. A. The first one, I would like to get the first one.

Q. All right. What percentage of the jobs—say you do a hundred jobs in a year. A. Yes.

Q. What percentage of those hundred jobs would include some back-up for tile? A. Oh, some back-up for tile. Well, not all of them do.

Q. Well, give me a percentage. A. It has to be about, maybe, ninety per cent, ninety-five per cent.

Q. All right.

Now, taking your experience in this area, working for Doerner and the other people, what percentage of all the jobs that you know of where a mortar coat is installed, tile is going to be put on with a thin-set method, what proportion of the work, the installation of that mortar coat, is done by plasterers in this area? A. About eighty-five per cent.

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## [1047] Cross Examination

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[1051] Q. Are there more, as far as you know—now, you have said you are not an expert on tile setting. As far as you know, would there be some more demands on a preparation for a wall or a ceiling to receive tile than for this type of a finish? A. Yeah, there's certain demands on this wall. This wall has to be pretty straight. It's going to get tile on it, accoustical tile up against it. It's going to get, maybe when they did this wall there could have been a cabinet was [1052] going to be in there, there has to be a certain amount of thought go into this wall. They can't just slap it up there.

Q. But my question is is it the same amount, as far as you know, in the installation of tile, do you think that this wall, for you to put a finished plaster coat on this wall, do you think that would take no more than it would for a wall that was going to receive tile? A. No, because of the fact we have so many close dimensions in the bathroom and so many things to work with, it is going to necessiate some more time.

Q. For the tile installation, you are saying? A. Yes, sir.

Q. All right. A. Because of the plumbing fixtures and things going in there.

Q. What about the courses of the tile, to have the joints straight and all that sort of thing? A. The courses of the tile would be up to the tile setter.

Q. Well, I know that it is, but I am talking about the foundation getting ready for the tile setter. A. We just have to plumb it and square it, rod it true.

• • • • •

[1056] Q. Isn't generally the plasterers gone off of the job when the tile setter comes in? A. Not all the time, no, ma'am.

Q. Don't you, the different crafts, generally work with each other, that one finishes up before the other one comes in, on a given area, now? A. In an area?

Q. Yes. A. Yes, but I have always made it a point to go check with the tile contractors and see if everything was progressing satisfactorily.

Q. Now, when you put on your brown coat and you know there is going to be a thin-set, do you go get the specs. of the tile contractor and know what size his tile is going [1057] to be and the thickness of it? A. Yes, ma'am, we check generally with the job superintendent and see if he has got that information. If he doesn't then he will contact the architect and relay the information. In the event the tile setter hasn't a superintendent, which most of these contractors in town have superintendents, like Mr. Doerner, then we confer on the job, and we know what the thickness of the job, of the tile is going to be. It's mandatory that you know.

• • • • •

[1059] Q. Oh, I see. All right.

If you were going to square up a room what opening do you start from? A. What opening?

Q. Uh-huh. A. Oh, I think there is more to be taken into consideration than just an opening. I think you have first got to find out something about what the plumber is going to require.

Q. Well, now, this particular question I have in mind is just without any plumbing involved. Say in a corridor. A. If I were going to brown for the tile setter in the corridor?

Q. Yes. A. I would go to the prints and I would find out what margin was required by the architect on the door bucks.

Q. Yes. A. Then I would work from there.

Q. Do you know in advance how much his space, how much space he is going to have? A. Yes, ma'am, he generally has it on his door schedule, on the prints.

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[1061]

**Robert Eugene Underhill**

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

Q. (By Mr. Capuano) Mr. Underhill, are you a plastering contractor? A. Yes, sir.

Q. And what is the name of your company? A. Gulf Plastering.

[1062] Q. And how long have you been in business? A. Since 1957.

Q. Are you a plasterer by trade, too? A. No, sir.

Q. Now, in connection with your business has your company prepared walls with Portland cement to receive tile? A. Yes, sir.

Q. And have you prepared them for installation in the conventional method and the thin-set? A. Yes, sir. However, most of it is for the thin-set.

Q. Thin-set. O.K.

Now, can you give me from your recollection the names of some of the jobs, give me the name of one, as a starter. A. Well, two Spring Branch junior high schools.

Q. And where were those jobs? A. In Spring Branch. One on Westwood. One was the Westwood School. One was the Meadowood School.

Q. Is that in the Houston area? A. Yes, sir.

Q. Could you tell me approximately when that was? A. We finished in January of this year, I believe.

Q. All right.

And could you tell me what type of installation your men did on those jobs? A. We browned different small areas for the tile setters. [1063] There wasn't much tile on the job. We browned recesses for drinking fountains over masonry in most cases and some round columns in the kitchen and some kitchen walls and most of the bathrooms were glazed tile.

Q. All right.

Now, you say you browned over masonry and then the tile setter put his tile on that, is that the idea? A. Yes, sir, he used his setting bed and stuck his tile to it.

Q. Do you know what type of material he used as his setting bed? A. It was a thin-set material. I don't know what name brand it was.

Q. All right.

Could you tell me who the tile contractor was, do you recall? A. No, sir, I don't.

Q. All right.

Can you tell me another job you did? How about the Northeast Baptist Hospital, do you recall that? A. Yes, sir. This was some time ago.

Q. About 1962? A. Yes, sir.

Q. And is that here in Houston? A. Yes, sir.

[1064] Q. And could you tell me what type of work you had there? A. We had all the walls and all of the ceilings and partitions throughout the complete building.

Q. How about for back-up for tile? A. Yes, sir, all of that also, in every bathroom which there was approximately two hundred, and down every hallway, which there was four major hallways over two hundred feet long, and several minor hallways a hundred to maybe sixty feet long.

Q. Was that Portland cement behind the tile? A. In most cases, all wet areas. The hallway, however, was in most cases gypsum plaster except where they were adjacent to a bathroom, the bathrooms backed up to the hallways.

Q. I see. Then you put Portland? A. We put Portland cement in all the bathrooms and all of the kitchen area was also tile completely to the ceiling.

Q. All right. And how many coats did you put behind the tile? A. These were two inch solid walls in most cases which require, they are similar to this type of wall, six coats of plaster, counting both sides. Actually there was a scratch coat and a brown coat on the hallway side, which received tile in the thin-set method over this.

Q. All right.

[1065] And your plasterers did the work you just described? A. Yes, sir.

Q. How about do you recall the tile contractor on that job? A. No, sir, I don't believe he was a member of any of the associations, and I don't believe he was continuously in the tile business.

Q. O.K.

How about the Northwest Baptist Hospital, do you recall that one? A. Yes, sir, it was the same architect, same general contractor and owner, and the same method in all phases.

Q. And was that more recent than the other one? A. Yes, sir.

Q. When was that one? A. This is the Northwest?

Q. Yes, sir. A. This was finished approximately fifteen or sixteen months ago.

Q. Do you recall the tile contractor there? A. No, sir.

Q. How about Southwest Baptist Hospital, do you recall that job? A. Yes, sir, that was in 1963.

Q. Was the method of installation the same or different from the above, from the above jobs? [1066] A. It was the same.

Q. The same.

Did you have tile basically in the same areas, bathrooms, and so forth? A. Basically. There was one exception on this Northwest Hospital, I believe it was, that the exception being that the general contractor and owner, together, wanted vinyl down the hallways, but they did tile every bathroom.

How about the Golden Age Nursing Home? A. This was by the same people that built the hospitals and it was essentially the same except there was no tile in the bathrooms.

Q. Was this five jobs? A. Yes, it was five of them, complete.

Q. Where was the tile on those jobs? A. In the bathrooms and kitchen areas.

Q. Oh, there was tile in the bathrooms there? A. Yes.

Q. Same type of installation you just described? A. Same type.

Q. Did you have any, on any of these jobs, tile or your brown coat over masonry instead of lath and scratch coat?

A. If a masonry wall happened to be one of the walls in a bathroom or kitchen, it was then plastered one coat over.

[1067] O.K.

How about the Shadow Oaks School? A. This was another job similar to the same, it was all two and a half inch solid partitions with cement, scratched and browned in all the bathrooms.

Q. All right.

Tile put on the thin-set method? A. Yes, sir.

Q. Do you recall the tile contractor? A. No, sir, I don't. That one was a long time ago.

Q. That was about 1959, was it? A. Yes, sir.

Q. How about the Willow— A. Willowmeadows Baptist Church?

Q. Right. A. This job is just being finished at this time. I have men on it today. There is not a lot of tile on it. There is some of this little mosaic tile on the exterior of the building which we lathed it, scratched it and browned it for this tile and furnished a scaffold for the tile setters.

Q. Do you recall who he is? A. No, sir, I have no contact with him personally. We just left our scaffolds there at his convenience because we had some cleaning to do and he completed the job very fast, I think about two days is all he was there.

[1068] Q. Did he ask you to leave the scaffold there? A. No, the general contractor did as a matter of convenience. We were trading out a scaffold. It was approximately some sixty feet in the air.

Q. O.K. We have covered the Spring Branch Schools, haven't we? A. Yes, sir.

Q. How about the Methodist Hospital in Houston? A. That would be the ninth story addition to it.

Q. Yes, that's right. A. Yes, there was two inch solid partitions and a little plaster over masonry on it.

Q. Where would that be, in what areas? A. In the hallways they plastered, they put tile over the hallways in the thin-set method.

Q. O.K. And that was about 1961, was it? A. Yes, '60 and '61, yes.

Q. How about the Beall Department Store? A. That is in Beaumont.

Q. Is that in Local 79? A. That is in Beaumont.

Q. All right. Never mind.

How about United Gas Building? A. In Baytown?

Q. Yes. [1069] A. This was mostly mosaics stuck onto a brown coat of cement on the outside.

Q. All right. A. Just strips over and under the windows.

Q. And you browned for that? A. Yes, sir.

Q. With plasterers? A. Yes, sir.

Q. And how was the mosaic put on? A. Thin-set method.

Q. Was that about 1961? A. Yes, sir.

Q. How about the Robert E. Lee High School in Baytown, do you recall that one? A. Yes, sir, there was very little tile in the lobby of that, and it was over plaster walls, which were scratched and browned by my men.

Q. Was that gypsum or Portland? A. All where it called for the tile it was Portland.

Q. All right.

How about the First National Bank in Livingston, Texas?

A. This was just the bathrooms and some little bit of work in the lobby, and it was scratched and browned by my plasterers.

Q. Bellfort State Bank in Houston. A. The same situation.

[1070] Q. Was that in 1965? A. Yes.

Q. Do you recall the tile contractor on that? A. Not offhand, no.

Q. How about the Second National Bank in, what is this, Atlanta, Texas? A. That is out of this jurisdiction.

Q. Oh.



How about the Alvin State Bank, do you recall that one back in '58? A. Yes, sir. There was tile in all the bathrooms which were set, I don't really remember how it was set there, whether it was thin-set or conventional.

Q. You browned it out, though, is that right? I mean, you put the scratch and brown coat on? A. We scratched the walls and done what plastering was required by the specifications. I don't actually remember how that one was.

Q. O.K. How about the First State Bank at Alvin? A. This was a remodel job. We did all the lathing on it preparatory to the application of marble, which was stuck over the lath and plaster, and I really don't think there was any thin-set tile on that except in the entryway, which was over some that was already existing.

Q. I see. O.K.

[1071] How about Hermann Hospital addition, do you recall that one? A. Yes, sir.

Q. Is that a recent job? A. Yes, sir.

Q. What year would that be, approximately? A. Last year.

Q. All right.

And that is here in Houston? A. Yes, sir.

Q. And was there any back-up for tile done there by your people? A. That job was a sheetrock job.

Q. I see. A. With a thin coat of plaster over it, and there was quite a bit of fireproofing around the stairwalls which the tile, if any, was used on the rest room sides and I can't really say how the tile was applied or if there was any there.

Q. O.K. A. Other than some mosaic on the outside, which was over walls that we fabricated and put above the doors.

Q. O.K.

How about United Surgical and Dental Trades Center? A. That plastering there was mostly over masonry in the bathroom areas, and we did do this browning.

[1072] All right.

Tile set in what manner? A. In the thin-set manner.

Q. Do you recall any other jobs offhand other than the ones we have named? A. No, sir.

Q. Did you have a job, a hospital job in Yoakum, Texas? A. Yes, sir.

Q. When was that? A. This was finished about this time last year.

Q. All right. And did you have any back-up for tile there? A. Yes, sir, we built all of the walls and ceilings on that job and all of the bathrooms were tiled over cement and brown coat and scratched coat that we put in.

Q. All right. Was that thin-set, too? A. Yes, sir.

Hearing Officer: Is this Yoakum within 79's jurisdiction?

Mr. Capuano: Yes, sir.

The Witness: It's on the border.

Q. (By Mr. Capuano) Now, have you prepared walls with gypsum plaster which were to receive tile? A. Yes, sir.

Q. Now, would you tell me just generally how your people would prepare, your plasterers would prepare a wall with Portland cement to receive tile? A. Take a metal lath wall. [1073] A. Well, to start with, the lathers would build the wall out of channel iron and metal lath and plumb it, and the plasterers would scratch it and brown it plumb.

Q. How would they put the brown coat on, the plasterers? A. With a hawk and trowel and put it on plumb.

Q. All right.

Tell me how your people, your plasterers, would prepare the same wall if it was going to be made out of gypsum plaster. A. In the same manner, exactly.

Q. Would there be any difference in how they—let me ask you this, would they do anything with the wall, the plasterers, with their brown coat? How would they actually put their brown coat on? A. To receive tile or just—

Q. No, receive tile, Portland cement. A. Well, if it was a long hallway where everything would reflect imperfections

or faults, we would plumb, we would find the center of the hallway, snap a line down the center, start at end end, we would make a plumb mark up to the height, door header height, and pull a line from one end of the hallway to the other, and use molding plaster to make a dot every six foot or rod length, which would coincide and be directly square and plumb with the center line in the floor.

[1074] Q. I see. A. And then we would build a screed from one end to the other to come flush with these dots, and then fill the plaster in from there down and up.

Q. Rod off from there, then? A. Yes, sir.

Q. Now, when your company has been preparing the walls to receive plaster on these jobs, I am sorry, to receive tile on these jobs you just described to me, has any tile setter union representative or any tile setters come to you and claimed the work that the plasterers were doing? A. No, sir.

Q. Now, have you ever seen tile installed in the conventional method in a thick mortar setting bed? A. Yes, sir, I have helped.

Q. You have helped do it? A. Yes, sir, the first job I ever had was as a tile setter's helper.

Q. All right.

And you have seen plasterers put up a brown mortar coat also, haven't you? A. Yes, sir.

Q. Are the materials in those two coats basically the same? A. Basically.

Q. All right.

[1075] Now, could you tell me which craft, tile setter or plasterer, can do a more skillful and more efficient job in putting that coat of mortar on the wall? A. Well, you are asking for two, an answer to two questions at once. First you say more skillful. I don't think the plasterers are any more skillful as far as getting the wall plumb because you can only get it perfect or the quality can only be so good, I don't care who puts it up.

Q. All right. A. But then you ask me who is the most proficient? If you mean who is the fastest and who can

perform this the fastest, the plasterers can perform it the fastest, but I don't believe he is any better in his finished work. I don't believe it's any better than a tile setter. But it is as good and it is faster.

Q. All right.

Now, could you tell me whether you as a plastering contractor have received any complaints from tile contractors about the quality of the work that your plasterers perform under the tile? A. Well, this covers a long period of time. Now, there was a time, I think, in 1959 we had problems on one job, and I haven't run into any since then.

Q. Now, could you tell me some other types of installations where your plasterers use Portland cement besides behind tile? [1076] A. We use so much Portland cement my plasterers are getting to think there isn't any gyp any more. Last year we didn't put four hundred bags of gyp all year long. We put several carloads, in fact we averaged practically a carload of cement a month, on canopies and then the exterior of buildings, and overhangs, just many places that it's used on the exterior of buildings and some interiors, but mostly, generally speaking, Portland cement is used in the wet areas on the interiors of buildings and mostly always on exteriors.

Q. O.K.

Now, you are a lathing contractor also? A. Yes, sir.

Q. Do you also, then, build walls from the outside, I mean, build the complete wall? A. Yes, sir, we did on this Willowmeadows Church, we built the complete wall, outside and inside, of the exterior of the building.

Q. Including the studding that goes in the building of the wall? A. Yes, sir.

Q. Could you tell me, in your opinion, which craft, the tile setters or the plasterers, has the area practice in this Houston metropolitan area for the preparation of walls to receive tile? And I am talking about the Portland cement mortar coat over which tile is to be installed in the thin-set [1077] method. A. Well, actually I can only speak for the jobs that we do.

Q. Yes, in your experience. A. Which last year we did seventy-five, seventy-eight jobs, if you count little bitty contracts as jobs. And I don't know of any instance where anyone else put up the brown coat for the tile. This may have happened, but I don't know of it.

Q. O.K. A. On the jobs that I do know about.

Q. Well, I believe you said we. Which craft was it that did all these jobs? A. The plasterers.

\* \* \* \* \*

### Ernest Alfonse Richter

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified [1078] as follows:

\* \* \* \* \*

Q. (By Mr. Capuano) Mr. Richter, could you tell me by whom you are employed? A. Tobin & Rooney Plastering Contractors.

Q. And what is your position with Tobin & Rooney? A. Field superintendent.

Q. You are a plasterer, are you? A. Yes, sir.

Q. How long have you been a plasterer? A. Forty-two years.

Q. How long have you been in a supervisory position for Tobin & Rooney? A. Approximately ten.

Q. Now, in connection with your work as a field supervisor, have you had jobs under your supervision where walls have been prepared with Portland cement to receive tile? A. I have.

Q. And have you prepared walls where tile was installed in both the conventional and thin-set methods? A. I have. [1079] Q. Now, I am going to ask you about various jobs and I would appreciate it if you could tell me if you recognize these jobs and can tell me anything about them. How about the Boy Scouts Building here in Houston? A. Yes, sir, the toilet rooms in that were browned out by the

plasterers and fixed up for the thin-set method. They were plumbed, squared.

Q. Rodded, too? A. Rodded, too.

Q. Was that over block, do you know, or metal lath? A. Some of it was over metal lath and some of it was on block. It's been about five years, I think.

Q. O.K.

Now, how about St. Joseph's Hospital, do you recall that job? A. Yes, sir.

Q. Is that here in Houston? A. Yes sir.

Q. When was that? A. That was just this past year.

Q. And was there a back-up for tile done there? A. Yes, sir, in all bathrooms.

Q. And where were the bathrooms, in each room? A. In the rooms.

Q. You mean in each hospital bedroom, in effect? [1080]

A. That's right. In this particular wing I believe that you are speaking of there was the north wing, and it had three mechanical floors underneath it. Some parts had a kitchen in it, but we did both wings of the hospital, and they were all done the same way.

Q. O.K. And was the tile set in the thin-set method? A. Yes, sir.

Q. And who put on the brown or plumb coat of mortar? A. Plasterers.

Q. Did you have scratching there underneath it, too? A. Some places, where it was metal lath.

Q. Do you recall the tile contractor on that job? A. No, sir, I sure don't.

Q. How about the Boy Scout Building? A. No, I don't.

Q. Do you recall whether your plumb coat of mortar was dry when the tile setters started to apply their thin-set material? A. When you speak of dry how many days elapsed in between the applications, is that what you are speaking about?

Q. Yes. A. I would say approximately a week.

Q. O.K. A. On the St. Joseph's Hospital. Sometimes it's longer.

Q How about the Nurses Dormitory at the Houston Medical [1081] Center, is that— A. Yes.

Q. When was that job, approximately? A. Oh, that job was approximately '62, I believe.

Q. All right.

And what type of tile wall preparation did you do there? A. What type? Same type. We scratched and browned wherever there was lath.

Q. And where did they have or where was the tile going to be installed in that job? A. In the bathrooms.

Q. In the bathrooms. O.K.

How about the Windsor School in Houston, do you recall that one? A. Yes, sir.

Q. About '62, was it? A. Yes, sir.

Q. What type of installation was that? A. That was thin-set.

Q. Did your plasterers perform the same functions we have been talking about? A. Yes, sir.

Q. And what did you have there, bathrooms? A. Bathrooms, yes, sir.

Q. Shower rooms? [1082] A. Some places in corridors, locker rooms.

Q. Corridors, too, you say? A. Some places around the drinking fountains sometimes they have a tile panel.

Q. I see. And was this in Portland cement? A. Yes, sir.

Q. Do you recall the tile contractor? A. That was in '61. No, I don't. That is pretty far back.

Q. How about the Cypress-Fairbanks School? A. The Cypress-Fairbanks School, yes, sir.

Q. That is in the Houston area, too? A. That is in the Houston area. It's up the road about twenty miles.

Q. About in 1962, was it? A. Yes, sir.

Q. Was that a similar installation as to what we have just been talking about? A. Yes, sir, the tile contractor on that was Narciso.

Q. All right.

And plasterers did your browning and plastering? A. Yes, sir. \* \* \*

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[1083] Q. All right. How about the Cookbook Bakery? A. Yes, sir.

Q. Is that here in Houston? A. Yes, sir.

Q. Was that back in about '58? A. Yes, sir.

Q. And was the installation similar or different? A. Similar, same thing.

Q. How about the Hermann— A. Professional Building?

Q. Professional Building, yes. Is that here in Houston, too? A. Yes, sir.

[1084] Q. About 1958? A. Yes, sir.

Q. Installation the same? A. The same thing.

Q. How about the Houston Hospital at Elgin and Ennis in about 1961, do you recall that one? A. Yes, sir.

Q. And what was the— A. We browned for the tile in the kitchen and in the bathrooms and in the wet areas.

Q. Thin-set method? A. Thinset.

Q. How about Tideland Motel on Main Street? A. Yes, sir.

Q. Is that back about '57 and '58? A. Yes, sir, that was originally. They added some since then, but we didn't have it.

Q. All right. Was that thin-set, too? A. Same thing.

Q. You did the browning? A. Yes, sir.

Q. How about Little York School? A. Yes, sir, that is out here on Little York Road. Same thing.

Q. All right.

[1085] Let me read off the various names of some jobs I have here, and if you don't recognize one, interrupt me, but if you recognize them all, wait until I finish with the list and we can talk about it. A. O.K.

Q. How about the Reed Road School? A. Yes.

Q. Dominican College? A. Yes.

Q. McBar Company? A. Yes, sir.

Q. Hotel America? A. Yes, sir.



Q. 2016 Main Building? A. Yes, sir.

Q. What was that, the name of the building or the address of the building? A. 2016 Building. It's apartments.

Q. Oh.

T. J. Bettes? A. T. J. Bettes.

Q. What is that? A. They remodeled an office building they bought on Franklin and Main, and we went in there and remodeled it and we had some bathrooms in there that was done in the thin-set [1086] method.

Q. Fannin State Bank? A. Yes, sir, that was a new building.

Q. St. Elizabeth's Hospital, Number 2 Wing? A. Yes, sir.

Q. Sharpstown Hospital Memorial or, wait a minute, I will take that one off.

Kress. A. At Main and Capitol, yes, sir.

Q. What is that, is that an office building? A. That is an office building up over the Kress Store. It was called the Kress building.

Q. How about the Medical Arts remodeling job? A. Yes, sir.

Q. Americana Building? A. Yes, sir.

Q. Hotel America? A. Yes, sir.

Q. Siteman Building? A. Yes, sir.

Q. American General? A. Yes, sir.

Q. What is the American General? A. American General is the insurance building out here on Allen Parkway and the tile work that was in that, we [1087] didn't have too much, it was just wing walls in the toilet rooms that divided the individual commodes, and they had tile on those wing walls.

Q. Is that about 1965? A. Yes, sir.

Q. How about Jones Hall? A. Yes, sir, that was last year.

Q. Now, were all these jobs in the Houston area that we just went over? A. Yes, sir.

Q. And were all of them between about 1960 and 1966?

A. Well, some of them were '58 and '57.

Q. I mean just the last ones we covered. A. Just the last ones, yes, sir.

Q. Now, was the installation on those any different from the ones we had just covered previously? A. No, sir.

Q. Same type installation? A. Same type installation.

Q. You scratched and browned? A. Yes, sir.

Q. Tile is the thin-set, is that right? A. Uh-huh. We are also doing the one across the street here the same way, the Civic Center.

Q. What is that? [1088] A. We are also doing the Civic Center the same way.

Q. The Civic Center across the street? A. Yes, sir.

Q. Is that a big job? A. It covers three blocks.

Q. Pardon me? A. It covers three blocks.

Q. And what are you doing there? A. Well, we are plastering.

Q. In connection with tile. A. Oh, we are browning for tile, for thin-set.

Q. And any scratch coat under your brown there? A. No, sir, might be one pipe chase in the toilet room that has lath on it, but the rest of it would be on concrete block.

Q. All right. And you are putting on one plumb coat? A. One plumb coat.

Q. And then the tile setters are going to install their tile the thin-set method? A. That's right.

Q. By the way, all those jobs we covered, I am not sure we mentioned it, those are the jobs where you did the back-up for the tile, right? A. Yes, sir.

Q. Now, in putting up your brown coat, say, on top of the [1089] scratch coat, would you tell me what tasks your plasterers would do? A. Well, it depends particularly on the specific area you are working in. If it's a bathroom you have to work according to your plumbing outlet, your door reveals and things such as that. If you are working inside of a corridor you have to find the center line and work off of it. But in your bathrooms you have to get,

keep a certain dimension on the hub on the plumbing. Let me inject this thought, we do quite a bit of real large work, and we get into the multiple bathroom facilities to where we have a gang of plumbing fixtures that stick out of one long wall. And you work with the plumbing and then you work toward the door. There are several of the things you have to work to. The general contractor generally lays out the finish wall line and you work off of it.

Q. All right.

Then how will your plasterers go about putting up your brown coat? A. How would they go about putting up—

Q. Yes. A. They would screed the wall.

Q. Put screeds on the wall? A. Put screeds on the wall. horizontal and vertical screeds.

Q. All right.

[1090] How about squaring? A. Well, if they have to square any they could go with three, four, five method or either six, eight and ten.

Q. O.K. A. Or either we use a big, large wooden square lots of times in a small bathroom like hotel bathrooms or hospital bathrooms, we will make a couple of wooden squares, and after we get one wall that has the fixed location for the finished type of plaster, why, we square off of that and work around a small room.

Q. O.K.

Have the tile setters ever made a claim on you for the installation of your brown coat? A. No, they never asked for the brown coat, no, sir.

Q. Now, when you go on a job do you have any dimensions that you must meet? A. In what respect?

Q. In various rooms. A. In various rooms there are dimensions on the plans.

Q. There are dimensions on the plans? A. Yes, sir, and if there is any cabinet work, why, you have to stay within those dimensions.

Q. Can you vary those dimensions on your own? A. No, sir, we never do.

Q. Why is that? [1091] A. We get authorizations to vary them if it goes against the plans and specifications. Otherwise you will have to take it down if it's not right.

We verify it with the superintendent and if he can't verify it, why, he goes to the architect.

Q. Why is it so important that you maintain the specifications on the plans? A. Well, a lot of these prefab fixtures, Formica tops and things like that, that can't be cut and trimmed after they get on the job, and they are made up to a certain specific measurement, and when they slip into this particular spot they would have to go in there, whether it be tile or whether it be plaster, you have to use the same—

Q. Dimensions? A. Dimensions, everything such as that.

Q. Now, do you confer with any other craft superintendents or foremen on construction jobs in connection with your work? A. Yes, sir, we do.

Q. Pardon me? A. Yes, sir.

Q. Who do you confer with, what crafts? I don't mean names. A. You mean in reference to tile work or reference to—

Q. Yes. A. —anything? Well, wherever we have any discrepancies I have a foreman on the job that takes care of it, that works [1092] with the superintendent. If it's something he can't take care of, well, I will try and go up over him.

Q. Do you talk to any crafts besides the, in other words, in connection with your work do you have to talk to any other craft foremen on the job? A. Oh, yes, sir. On these hubs on these bathrooms, now, the plumber needs a specific measurement. You have to get the thickness of your tile. You can either get it from a tile man or either you can get it from the architect. He generally has a sample of what he has got. And when you get with the plumber and find out how much protrusion he has to have on the hub of his pipe and then you start working from there, and that is generally the first wall we start.

Q. Are the tubs already installed when you do the area around the tub? A. The tub?

Q. Yes. A. Yes, sir.

Q. They are? A. Yes, sir.

\* \* \* \* \*

[1094] Q. All right.

Now, have you seen tile setters install that three-eighths of an inch coat you just mentioned? A. Sure have, yes, sir.

Q. Have you seen plasterers install your brown or float coat? A. Yes, sir.

Q. Could you tell me whether one craft performs the installation of that mortar coat, be it a brown coat or a three-eighths setting bed, more efficiently than the other craft? A. More efficiently?

Q. Yes. A. I would say the plasterer would.

Q. Pardon me? A. The plasterer would.

Q. And why would you say that? [1095] A. Well, because he can do it faster. He works with a hawk and trowel eight hours a day. You might say, well, the tile setter works with it two hours. It would be efficiently, it would cost less for the operation.

Q. For whom to do it? A. Huh?

Q. For which craft to do it? A. Well, I would say for the job—job-wise cost, job cost-wise?

Q. Yes. A. I would say the plasterer could do the work a whole lot quicker.

Q. All right.

What would be your opinion as to the quality of the installation, in other words, the plumbness and straightness, and so forth? A. Well, I would say that our men could do it just as good as theirs. They might take a little bit longer.

Q. Who may take longer? A. Well, the tile setter.

Q. I see.

Now, have you had situations where you will have bathrooms with a little wainscot and gypsum plaster above it? A. Yes, sir.

Q. And we have had some testimony on this. Would your method of installation be similar to that? Have you been [1096] sitting here during this testimony? A. Yes, sir.

Q. You would put in the brown coat and then your finish coat before the tile is installed? A. Yes, sir.

Q. And that is typical? A. Typical, unless it specified that the finish coat should finish flush with the tile.

Q. All right. A. And then the tile has to go in and we get the finish coat afterward.

Q. Assuming you have your finish coat already on the wall above the wainscoting, are the dimensions of the room set at that point? A. Yes, sir, that would be set in setting your dimensions. In other words, the brown coat that you put on for the tile man would be continued up the wall and then as you come down with your finish coat you would come down approximately an inch or an inch and a half below the tile line so that whenever the tile man finished his operation it would be complete. There would be no patching involved.

Q. Now, if another craft did the brown coat for the tile below the wainscoting—let me put it this way, if one craft did the brown coat for the wainscoting and a different craft did the brown coat for the gypsum plaster above the [1097] wainscoting would they have to, and assuming the tile is going to be flush with your plaster, would they both have to use the same dimensions for plumbness and squareness, and so forth? A. Well, let me say this, that in what respect are you asking me this question, now, that if someone else was to put on the brown coat?

Q. Yes, in other words, another craft other than plasterers put on the brown coat up to the wainscoting, top of the wainscoting, the tile. A. Yes, sir.

Q. Then your plasterers did the gypsum brown coat above that, and they put the white coat above that, but another craft was going to put the brown coat below it, and the tile is to finish flush with the plaster, can you have, would one craft have to follow the dimensions already set by the other craft or could they each go their own way? A. Well, I have never run into that particular situation. I know what you are saying there, that if someone, say that, for instance, that the tile man goes in there and browns up

the wall, we will have to follow his wall. Otherwise you will have a variance of thickness on his tile wainscot around the top of the tile.

Q. All right.

And if you went in and browned the wall before he put his [1098] brown coat in the bottom, he would have to follow your brown coat, correct? A. That's right.

Q. Now, in connection with the jobs you have under your supervision and taking last year as an example, 1966, could you tell me what percentage of the total number of jobs you had where there was included for your plasterer's back-up on the installation of a plumb coat of mortar for the installation of tile? Do you understand the question?

A. Yes, sir. I would say about ninety-five per cent.

Q. All right. A. We are on one job now that they are applying the tile directly to concrete block on the Houston Natural Gas Building, twenty-eight stories.

Q. Directly to block? A. Directly to block.

Q. Now, in your experience could you tell me in this area which craft has the area practice for the installation of this plumb coat of mortar behind tile to be installed in the thin-set method? A. Well, I don't see any other way out. We do ninety-five per cent of it.

Q. The plasterers do? A. The plasterers do. In the area.

\* \* \* \* \*

[1099] **Harry Duckett**

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

[1100] **Direct Examination**

Q. (By Mr. Capuano) Mr. Duckett, could you tell me what company you are connected with? A. I am at the present time connected with the Plastering Contractors Corporation.

Q. And what is your position with that company? A. President.

Q. And how long have you been connected with this particular company? A. Since we purchased Charles F. Schilling Company two and a half years ago.

Q. Were you with another employer or company prior to that time, two and a half years ago? A. Yes, I was with Charles F. Schilling Company.

Q. Oh, I see. A. And vice president of that company and head of the Plastering Division for seven years.

Q. For seven years. A. Uh-huh.

Q. All right.

And what kind of company was Charles Schilling Company? A. He was a multiple organization of acoustical tile, flooring and plastering and dry wall.

[1101] Q. All right.

And prior to that what company were you connected with? A. I was with the American Construction Company, general contractors, for approximately thirty years.

Q. They are a general contractor? A. Yes, sir.

Q. All right. A. And let me say this, headed their Plastering Division which they did their own plastering.

Q. O.K.

And has all this been in the Houston area? A. Right.

Q. Now, during your experience with Plastering Contractors and Schilling, had your company had contracts where you prepared walls to receive tile? A. Yes.

Q. Now, I am going to go over a few jobs with you. Let me ask you this first, can you give me the name of any jobs that you can recall where you prepared walls to receive tile? A. Quite a few of them.

Q. All right. You give me the ones you can remember. A. Twin Towers jobs, one of which is completed and the other one isn't completed at present.

Q. What are Twin Towers, are they apartment houses? A. They are apartment houses.



[1102] Q. And what type of preparation for tile did you do there? A. We scratched and browned the entire surface.

Q. What were there, bathrooms in the apartments? A. In the bathrooms, right.

Q. And this was over metal lath, I gather? A. Right.

Q. And Portland cement? A. Portland cement.

Q. Now, were the whole bathrooms Portland cement? A. Yes.

Q. O.K.

And how was the tile set? A. It was all thin coat, thin-set.

Q. Thin-set method? A. Right.

Q. Do you know what type of commercial thin-set was being used? A. Not positive, but L.&M., I think.

Q. O.K. That was Twin Towers. Can you think of another one? A. We have done three high schools in Spring Branch.

Q. O.K. A. All of which we scratched and browned behind the ceramic tile.

Q. And when were they done or are they still in progress?

[1103] A. One is in progress now, and the other two have been done within the last three years.

Q. All right. Who did the scratching and browning? A. The plasterers did the scratching and browning throughout.

Q. Is that going to be thin-set or were they thin-set, too? A. Yes.

Q. All right.

Can you think of any other jobs? A. We did—

Q. 500 Jefferson Building? A. 500 Jefferson Building. Which was all scratched and browned for ceramic tile.

Q. What is that, an office building? A. That is an office building.

Q. How about the zoo birdhouse? A. We did the birdhouse at the zoo.

Q. All right. A. The toilet rooms. There are two toilet rooms in the thing, which were scratched and browned, but the whole job is Portland cement.

Q. What do you mean the whole job is Portland cement?  
A. Imitation rocks, and the entire job on it was done with Portland cement.

Q. You mean the outside, exterior of the building? A. The inside of the building.

Q. Inside, too? [1104] A. Including the partitions, which were two-inch plaster partitions.

Q. What kind of plaster do you mean, gypsum or Portland? A. Portland.

Q. Do you know the, let's go back, do you know the tile contractor on the Twin Towers? A. I do not, I don't remember.

Q. How about the Spring Branch schools? A. I don't remember.

Q. How about 500 Jefferson? A. I don't remember which one was there.

Q. And the zoo birdhouse? A. No, I do not.

Q. McGinty office? A. McGinty Office Building.

Q. That is an office building here? A. Right. That is a small office building.

Q. When was that, last year? A. That was last year.

Q. Same installation, scratching and browning? A. Part of it was scratched and browned on metal lath and part of it was thin-set on dry wall.

Q. O.K. And all these have been in Houston, haven't they? A. Right.

Q. How about the Brazosport School? [1105] A. That is the only that is not in Houston. That is at Velasco, Texas.

Q. The McGinty office building, what tile contractor? A. I don't recall.

Q. All right.

This Brazosport School, was that—when was that, approximately? A. Oh, five, four years ago.

Q. All right.

And was that the same installation, thin-set? A. Right.

Q. Where did you have tile there? A. In the bathrooms, toilet rooms.

Q. Who was the tile contractor, do you recall? A. I don't recall.

Q. How about the Cameron Lob? A. Cameron Laboratories.

Q. Oh, Cameron Laboratories, I am sorry. A. The partitions in there were all plastered either on metal lath or masonry, and there was quite a bit of ceramic tile in behind laboratory fixtures and in the toilet rooms, all of which we scratched and browned behind.

Q. With Portland cement? A. With Portland cement.

Q. Tile contractor, do you know? [1106] A. I do not. I will say this, I have done a lot of work with Mr. Martini and Mr. Zambon and Narciso, and I have no, I just don't recall which ones did which job.

Q. I see. O.K.

How about the Petrotex Office Building? A. It was an office building out on the east end of town, east side of town, which we scratched and browned behind the ceramic tile there.

Q. Was that 1965? A. That was '65. That was the third job we had done out there for them, '65 and '63 and '61, I believe.

Q. Pardon me, you had three jobs out there? A. There were three different jobs out there.

Q. I see.

Were any of them conventional method or were they all— A. I think the first one was the conventional method.

Q. You mean over your brown coat— A. We put the brown coat on and then the conventional bed coat was put on, and the tile installed immediately.

Q. Then on the other two jobs what was done after your brown coat? A. A thin coat.

Q. They put a thin-set after your brown? A. Right.

Q. All right.

[1107] How about the Woodridge Church? A. The Woodridge Church was all plastered throughout on ceilings and walls and behind the ceramic tile wainscots in the rooms,

in the bathrooms, we scratched and browned with Portland cement.

Q. Is that in 1965? A. Right.

Q. Do you know the tile contractor? A. I do not.

Mr. Capuano: One moment, please.

Q. (By Mr. Capuano) How about the Bank of the Southwest Towers, do you recall that one? A. Yes, that was a twenty-one story office building which has all metal lath and plaster partitions throughout it. The toilet rooms were all scratched and browned.

Q. And tile— A. Behind the ceramic tile.

Q. How was the tile installed? A. It was—

Q. I mean, what method? A. I am sure it is thin-set.

Q. Do you recall the tile contractor? A. I do not.

Q. Who did this scratching and browning that you put on? A. The plasterers, my plasterers did it.

[1108] Q. All these jobs were in Houston, were they? A. Right, except for the Brazosport School.

Q. Yes. That is within the jurisdiction of 79, isn't it? A. It is.

Q. Could you tell me some other areas where you as a plastering contractor used Portland cement? A. Yes, a great many jobs at the present time, within the last few years, we have had what is called marble crete, which is a finish surface on exterior walls, curtain wall construction, that the entire wall, both inside and outside of metal studs, is covered with lath and both the inside and the outside is scratched, browned and finished with Portland cement.

Q. Stucco, too? Stucco in other places? A. Yes. The Conquistador Apartments, which is again a twenty, seventeen story apartment in Sharpstown, the entire curtain wall areas are Portland cement. It was dry wall inside and the tile was stuck there on the sheetrock, but the entire exterior of the building, practically, is Portland cement.

Q. Now, have the tile setters ever made a claim on you

for the installation of your Portland cement mortar coat, the plumb coat? A. Directly, no.

Q. Now, have you seen the installation of tile in the conventional method being done? [1109] A. Over a great many years, yes.

Q. All right.

Have you ever seen tile setters actually installing their mortar setting bed? A. Yes.

Q. I am talking about the conventional method now. A. Right.

Q. And you have seen plasterers do it, of course. A. Right.

Q. And the materials are basically the same, aren't they? A. Yes.

Q. Now, could you tell me which craft does the more efficient job in the installation of the mortar coat, plumb coat, to which tile is to be installed? A. If by efficient you mean more speedily, more economically, the plasterers do. As far as the—

Q. Quality. A. Yes, the quality of the efficiency on the thing, there is practically no difference between the two of them.

Q. You mean they will both put up a plumb wall straight? A. One is just as good as the other.

Q. O.K.

Why do you say the plasterer would be more efficient, though? A. Because he uses a trowel and hawk for practically eight [1110] hours a day, whereas the tile setter puts it up one or two hours or three, maybe, and then uses the rest of his time in the installation of his ceramic tile.

Q. Now, have you as a plastering contractor received any complaints from the tile contractors about your work of your men? A. No.

Q. I am talking about the back-up for tile. A. No, I have not.

Q. Now, could you tell me in your experience in this area which craft has the area practice as far as putting up a

mortar coat, plumb coat of mortar, on which tile is to be installed in the thin-set method. A. The plasterers have been doing it probably ninety per of the time, as far as I am concerned.

Q. O.K. A. I will say this, we do figure it all the time.

\* \* \* \* \*

#### Cross Examination

Q. (By Miss Thacker) Mr. Duckett, did you say you did the Southwest Towers Building? A. Yes, ma'am.

Q. Conventional method? [1111] A. As I recall it, it was thin-set, but I am not sure.

Q. Texas State Tile floated their own surface there? A. It was conventional.

\* \* \* \* \*

Q. Now, of your total plastering work that you do, Mr. Duckett, all of your plastering work that you do, what per cent of that total is the preparation to receive tile?

A. I would hate to set a percentage on it because that is one thing we don't keep any records of. As I said, we do figure always to scratch and brown behind ceramic tile.

Q. But you don't actually know? A. I don't know exactly what that percentage of the total would be.

\* \* \* \* \*

[1114]

#### Arthur Sanders

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

#### Direct Examination

Q. (By Mr. Capuano) Mr. Sanders, by whom are you employed? A. Tobin & Rooney.

Q. And in what capacity? A. Foreman.

Q. Plastering foreman? A. Plastering foreman.

Q. Are you a plasterer by trade? A. Yes, sir.

Q. How long have you been a plasterer? [1115] A. Twenty-one years.

Q. Did you serve an apprenticeship? A. Yes, sir.

Q. Where? A. St. Louis and East St. Louis, Illinois.

Q. All right.

Now, have you run jobs for Tobin & Rooney where your plasterers performed back-up for tile? A. Practically every one of them.

Q. Every one of the jobs? A. Uh-huh.

Q. Can you give me the names of some of the jobs? A. Addition to the Jeff Davis Hospital.

Q. All right. A. That was in about '58, I imagine it was.

Q. All right.

And that is here in the Houston area? A. Yes, sir.

Q. And what type of back-up did you have there for the tile? A. Cement for thin bed method.

Q. Was it over metal lath or what? A. Metal lath and some tile.

Q. What do you mean some tile? A. Some tile block.

Q. You mean clay tile walls? [1116] A. Yes, sir.

Q. And you put over the metal lath how many coats? A. Two, scratched it and plumb coat.

Q. And how was the tile installed over that? A. Thin bed.

Q. O.K.

Do you recall who the tile contractor was? A. Texas Tile & Terrazzo.

Q. All right.

And who did the plumb coat there? A. The plasterers.

Q. Can you think of another job? A. Humble Building.

Q. Humble Building? A. Yes, sir.

Q. Where is that? A. Houston, downtown.

Q. And when was that? A. It run from '59 to about '61.

Q. All right. And tell me what you did there. A. The bathrooms were browned over gypsum and finished before they stuck tile over them.

Q. Browned and finished. What do you mean by finished?

A. Finished coat, similar to these walls right here (indicating).

[1117] Q. Oh. And they put their tile to the gypsum?

A. Yes, sir.

Q. You mean the gypsum white coat they put tile to, is that right? A. It wasn't a regular white coat. It was a gypsum trowel finish.

Q. Oh, I see. And they put their tile with some sort of thin-set material? A. It was a thin-set material, yes, sir.

Q. Do you recall having any problem on that job? A. Yes, we had some trouble. They had some trouble with lumpy material. It was making the corners of their tile stick out which was blamed on us.

Q. Would you tell me how you learned about this problem? A. Through the inspector.

Q. Could you explain it to me? A. The inspector checked the walls before the tile was set and then checked it after it was set.

Q. And was there any—did you have to correct any of your work? A. Occasionally we had a little to correct, not a whole lot.

Q. And what did the inspector find after he checked, before and after? A. I don't understand.

Q. Well, you say the inspector checked the walls before the [1118] tile was installed and then after the tile was installed? A. He found that the corners of the tile was sticking out due to the lumps in their mastic.

Q. Underneath the tile? A. Yes, sir.

Hearing Officer: What job was this? I missed that.

Mr. Capuano: Humble Oil Building.

The Witness: Humble Oil & Refining.

Miss Thacker: It was done in '59, you say?

The Witness: The plastering work started in that time.

Miss Thacker: The present building?

The Witness: Yes, ma'am, or '60. I don't know the exact date on it.



Q. (By Mr. Capuano) How long did you continue on that job? A. I was there a total of twenty-eight months, all told, and it started around the early part of—the last part of '59 is when we started our plastering.

Q. And how about the T.S.O. dormitory, is that right? A. T.S.U.

Q. T.S.U. dormitory? A. We scratched the bathrooms only.

Q. All right. What job is that? A. That is Texas Southern University. We did not put the plumb coat on.

Q. O.K.

[1119] Q. And did you work on the Brazesport Hospital? A. Yes, sir.

Q. That is in Freeport, Texas, is it? A. Yes, sir.

\* \* \* \* \*

Q. Now, when you are on a job do you confer with the foreman or superintendent of any other crafts? A. Yes, sir, I do.

[1120] Q. Could you tell me which crafts you confer with? A. The plumbers, the superintendent, and if the tile men are on the job, check with them, see what they need.

Q. What is the purpose of this meeting with these other people? A. To see that we hold the right margins and keep everything in line so that the other crafts don't have any trouble with their walls.

Q. O.K.

Were you here during the testimony of Mr. Richter? A. Yes, sir.

Q. Did you hear the way he described how he, his plasterers, plumbed the wall and put it up, and so forth? A. Yes, sir.

Q. Would your testimony be similar to that if I asked you those same questions? A. It sure would.

Q. Now, could you tell me what percentage of the jobs that you do in an average year include back-up for tile? A. Just practically all the jobs we do include back-up for tile.

Q. And perhaps I should have added, where tile is to be installed over your plumb coat in the thin-set method. A. It's very seldom that we get a job where we don't do the plumb work on.

[1121] Q. Where it's going to be installed in the thin-set method? A. Yes, sir.

\* \* \* \* \*

[1123] John L. Flowers

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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#### Direct Examination

Q. (By Mr. Capuano) Mr. Flowers, could you tell me who you are employed by, please? A. Doerner Plastering Company.

Q. In what capacity? A. Foreman.

Q. How long have you been a plasterer? A. Twenty-one years.

Q. Did you serve an apprenticeship? A. Correct.

Q. Where? [1124] A. Houston.

Q. Now, how long have you worked for Doerner? A. Twenty-one years.

Q. How long have you been a foreman for Doerner? A. About eighteen years.

Q. Now, in connection with your work for Doerner could you tell me if your plasterers have prepared walls to receive tile? A. They have.

Q. Can you give me the names of some of the jobs where you have? A. Well, the last couple of jobs was the Engineering Building, University of Houston.

Q. I think we already had that one.

Was Mr. Saylor on that too? A. Well, he was the superintendent.

Q. He was the superintendent of it. All right. We have already had that one.

Can you think of another one? A. And also the Casa de Maria on Alameda.

Q. Was that the St. Anthony Home? A. Yes.

Miss Thacker: We have had that.

Q. (By Mr. Capuano) How about the Sheraton Lincoln Hotel? A. Sheraton Lincoln Hotel, correct.

[1125] Q. Is that here in Houston? A. Here in Houston.

Q. And when did you do that job? A. In '61.

Q. And could you tell me what type of work your plasterers did on that job for tile? A. We scratched and plumbed the walls for, browned the walls for thin-set tile.

Q. Was this over metal lath? A. Some metal lath, some masonry walls.

Q. All right.

When you put your brown coat on, what would the plasterers do? A. Well, we would plumb, square the walls. Of course, we worked off of the fixtures, the plumbing fixtures.

Q. Did you use screeds? A. We used screeds.

Q. Did you rod the walls? A. Rodded the walls.

Q. How was the tile set? A. Thin-set method.

Q. On top of your brown coat? A. On top of my brown coat.

Q. Do you recall when the tile contractor came to put his tile on? [1126] A. Well, while we were on the job.

Q. Well, how many days would your brown coat sit there before the tile contractor would start applying his tile, average? A. Well, if I recall correctly, I had, I imagine it was several weeks, I had quite a few of the toilet areas ready for the tile setter before they started on them.

Q. O.K.

What did you have, bathrooms in each room of the hotel, is that what you had there? A. No, in the hotel portion all the tile was, the only tile they had was floor and a base, and this was in the office portion, six through twelve.

Q. I see.

Miss Thacker: The contractor.

Q. (By Mr. Capuano) Do you know? A. Texas State.

Q. O.K.

Now, when you are a foreman on the job do you make any contact with foremen of other crafts? A. Yes, I do.

Q. And for what purpose? A. To work together, we work together with all the crafts. We have to in cases where we, when we start the bathrooms, we work with the plumbers, the general contractor, the toilet [1127] partition people. We have to know the correct dimensions for all of these items before we start our work in order to get a good job.

Q. And— A. Have to know the thickness of the tile.

Q. Who do you find that out from? A. From the tile setters, if they are on the job, and sometimes they are because sometimes the same people are putting down the terrazzo floors.

Q. Putting down the terrazzo floors, you say? A. Correct, yes. The tile setters.

Q. The tile setters put terrazzo floors down, too? A. Some of them are terrazzo men also.

Q. Oh, I see.

And do you ever consult anybody else besides other craft foremen about job conditions? A. Well, the architect and the superintendent, we work hand in hand. If I need to know the thickness of the tile, you know, and the tile setter is not on the job, I will go to architect, he usually has a sample of the tile, for the thickness. Of course, usually the dimensions are on the plans that give us the margin we need to hold.

Q. The plans give you this? A. Right.

Q. Now, have you see any tile installed in what we call the [1128] conventional setting bed method? A. I have. It's been quite a while ago.

Q. Have you seen tile setters putting that setting bed in, the conventional setting bed? A. The conventional setting bed?

Q. Yes. A. I have seen them in the past.

Q. And is that similar to your brown coat of mortar? A. Right.

Q. In make-up? A. Similar to our brown coat.

Q. You have seen tile setters put your brown coat on, haven't you? A. Yes.

Q. Can you tell me which craft is more skillful in putting that mortar up? A. Well, the plasterers are more skillful.

Q. Sorry? A. The plasterers, I think, are more skillful.

Q. Why do you say that? A. Well, they do it faster and they do as good a job.

Q. Now, would you tell me what percentage of the jobs you do in a year include back-up for tile, in other words, the brown coat, where tile has been set in the thin-set method? A. Well, I could say the jobs I have done in the past [1129] several years, a hundred per cent.

Q. And who did the work on those jobs? A. The plasterers.

\* \* \* \* \*

#### Cross Examination

\* \* \* \* \*

Q. Yes. Now, let's see if you understand me. Of all of the plastering work that you do, now, this is inside and outside, [1130] everything, all of the plastering work that you do, would you be able to give any kind of an estimate of what amount is for preparation to receive tile only? A. Well, I understood the question.

Q. Did you? A. I will say forty per cent last year. Now, it's not that way all the time, but last year I was on one job last year.

\* \* \* \* \*

[1163]

**Walter C. Gillespie**

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

#### Direct Examination

Q. (By Mr. Capuano) Mr. Gillespie, would you tell me what your craft is, please? A. I am a plasterer.

Q. All right. And how long have you been a plasterer?

A. Twenty years.

Q. And by whom are you employed? A. Tobin & Rooney.

Q. As a plasterer? A. As a plasterer?

Q. And did you serve an apprenticeship as a plasterer?

A. Yes.

[1164] Q. Where? A. In Houston, Texas, Plasterers Local 79.

Q. All right.

And in connection with Local 79 do you have any other job or position besides being just a plasterer for Tobin & Rooney? A. I am a plasterer apprentice instructor.

Q. Plasterer— A. Plasterer apprentice instructor.

Q. How long have you held that position? A. Four years.

Q. And how many apprentices do you have right now in your program? A. Fourteen.

Q. O. K.

Now, would you tell me, do you have any—well, let me do this first—

Miss Thacker: May we go off the record just a minute?

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Q. (By Mr. Capuano) Mr. Gillespie, could you tell me approximately when you went through the apprentice program? A. I started in February 1947.

Q. All right. [1165] A. And served three and a half years.

Q. All right, sir.

Now, in connection with your apprentice program—let me ask you this first, do you know if your apprentice program has any type of federal government approval? A. Yes, sir.

Q. What agency or department is it approved by? A. The Joint Apprenticeship Committee of the U. S. Government.

Q. All right.

Is that under the Labor Department? A. Yes, sir.

Q. The Bureau of Apprenticeship Training? A. Yes, sir.

Q. Now, could you tell me, your apprentice program, is that run solely by the Local? A. Yes, sir, with the state and city school.

Q. Do you have any sort of committee which oversees your work? A. Yes, sir, we have a Joint Committee.

Q. Joint Committee composed of whom? A. The plasterers and the plaster contractors.

Q. All right.

And is this committee set up as a result of any agreement between the Union and the contractors? [1166] A. Yes, sir.

Q. And do they have an apprenticeship trust agreement? A. Yes, sir.

Q. And, now, could you tell me whether you have—

\* \* \* \* \*

Q. (By Mr. Capuano) Now, in connection with your program could you tell me whether you have certain rules and procedures by which you go, selecting your apprentices? A. Yes, sir.

Q. I show you an exhibit marked P-24 and ask you if you can identify that for me? A. These are the procedures by which we go in selecting our apprentices.

Q. These are the procedural rules? A. Yes.

Q. Do you have or do you comply with any other procedural rules besides your own, any sponsored by the government? A. This was set up with the aid of a government man, and by the Bureau of Labor standards.

Q. By government man you mean the federal government? A. Yes, sir.

Q. They have representatives assist you, is that what you are [1167] saying? A. Yes, sir.

Q. Are they from the Bureau of Apprenticeship Training? A. Yes, sir.

Q. Now, I am going to show you P-25 and ask you if you can identify that for me? A. That is an application for plasterers' apprenticeship.

Q. All right.

And who fills that out? A. The boy that is making application.

Q. To come into your program? A. To come into our program.

Q. And after he fills out that application what is the next step in gaining admission? A. Then we issue him a slip and he takes it to the Texas Employment Commission and takes an aptitude test.

Q. I show you what has been marked P-26 and ask you if you can identify that? A. That is the thing that he takes, the piece of paper that he takes to the Texas Employment Commission.

Q. All right.

And what happens at the Texas Employment Commission with this boy or why do you send him there? A. It's to test his ability to use his hands. It's, like I say, an aptitude test. And after he has taken the test it is [1168] graded and sent back to Local 79.

Q. All right.

And I show you P-27 and ask you what that is? A. That is the grade sheet that we use when we are interviewing an apprentice personally. He has to appear before the Apprenticeship Committee for an interview, personally.



Q. Now, is the score on the aptitude test put on this apprentice rating form? A. Yes, sir.

Q. That is P-29, correct?

And then would you tell me what else is put on this rating form? A. Well, we go by this—this is P-27.

Q. I am sorry, P-27. Excuse me.

Wait a minute. Are you sure?

Yes, it is. O.K.

Go ahead, tell me what you put on it. A. As we talk to him, his attitude, the general feelings toward our trade or our craft, and as it says here, we give him the score of his aptitude test, plus others. He has to have a ninth grade education in order to fill out an application. And then his armed force, if he is a veteran or if he has had military service or not.

Q. All right. A. All of these things are concerned.

[1169] Q. Now, after this will the boy be admitted or rejected to the program? A. Yes, sir.

Q. And do you keep a record of that, too? A. Yes, sir.

Q. Do you have a big book? A. Yes, sir.

Q. All right.

Now, after the boy has been admitted to the program, what obligations does he have as far as training? A. He is required to attend school four hours one night each week, and then he has his on-the-job training.

Mr. Capuano: Would you mark that, please?

Miss Thacker: How many hours?

The Witness: Four hours a week.

Miss Thacker: Four hours a week.

(The document above-referred to was marked Plasterers' Exhibit No. 30 for identification.)

Q. (By Mr. Capuano) Now, I show you what has been marked P-30 for identification and ask you if you can tell me what this is? A. It is a guideline that I use in teaching the apprentice boys at the school.

Q. Are these minimum standards? A. Minimum standards that the U. S. Labor Department has put [1170] out.

Q. O. K.

And your program is, what did you say, three and a half years? A. Yes, sir.

Q. And the boy has to go to school one hour or four hours a week? A. Four hours a week.

Q. Four hours for the three and a half years? A. For the three and a half years.

Q. And then he has on-the-job training, too, is that right? A. Yes, sir.

Q. He has to work continuously during that period? A. Yes, sir.

Q. All right.

Now, does the apprentice program or you, as an apprentice instructor, keep records as to the type of work that the boy does on the job during this three and a half year period? A. Yes, sir.

Q. I show you what has been marked P-28 and P-29 and ask you if you can tell me what those two exhibits are? A. The P-28 is a book that the boy carries on the job and is recorded in there each and every thing that he does every day. This book is designed to hold a year of his work. Then every week I have this copy, P-29.

[1171] Mr. Capuano: Didn't I give you one?

Miss Thacker: No.

(A document was handed to Miss Thacker by Mr. Capuano.)

A. It's a record, I have a copy of it and keep it for my own records. I also have a copy that I send to Local 79.

Q. (By Mr. Capuano) All right.

And do you put the information on P-29 from the information contained in P-28? A. Yes, sir.

Q. And who fills in P-28? A. The boy, himself, fills in what he does each day. At the end of the week the plasterer

foreman signs it. It has a place for the plasterer foreman to sign it.

Q. O. K. A. And when he brings it to school it also has a place for the instructor to sign it, and he is given a grade.

Q. O. K.

Now, I notice, for example, taking the—it actually would be Page 5 of P-28, it's not numbered Page 5 but it's the first section that starts out with the blocks where you fill in. A. Yes, sir.

Q. Do you see that? A. Yes, sir.

[1172] Q. And over in the left-hand margin there are various letters of the alphabet beginning with A through M. Could you tell me whether those—what those letters mean? A. Yes, sir, they designate the type of work that this boy does during the day from scratch, brown, as you see, it's lettered.

Q. And is the identification of those letters listed on the previous page? A. Yes, sir.

Q. And then, for example, we have various numbers across the top of Page 5 on horizontal lines, and could you tell me what those numbers indicate? The days of the month? A. Those represent the days of the month.

Q. And then the boy puts in the letter for the type of work he did that day, is that the idea? A. Yes, sir.

Q. I see.

And then you take it off and put it on P-29, is that correct? A. Yes, sir.

Q. And you keep this record, P-29? A. Yes, sir.

Q. And what is the purpose of you keeping P-29? A. We keep our records so that we can determine if the boy is spending too much time on one thing. I mean, continuously, [1173] day after day after day. Such as scratching for six or eight months at a time. Then that way we know if he needs a change, if we feel, if the apprentice feels he needs a change, say, to browning or marble crete or finish work.

Q. You can keep track of his progress? A. Yes, sir.

Q. All right.

Now, could you tell me in connection with your classroom work where does this boy go to attend this one-hour or four hours per week? A. We have a school on the corner of Smith and Bell Street which is classified as a shop.

Q. All right.

And what do you do in there with the apprentices? A. I teach them the different parts of the craft, of this craft. I teach them how to square and plumb a wall, how to scratch, brown, how to lay out for cornice work, how to miter, how to use a water level.

Q. Go ahead. Continue. A. I teach them math and the intricate parts of plastering, job relations.

Q. Do you do anything with blueprints? A. Yes, sir, we teach them blueprints, how to read them, how to search out the details on the job as to what one specific wall might get, so on and so forth.

[1174] Q. What is a water level? A. A water level is a piece of plastic hose or any type of hose. It has two clear glass places like on a boiler, and water is put in there and it's used to level a ceiling.

Q. All right.

Do you teach them anything about squaring rooms? A. Yes, sir.

Q. What do you teach them about squaring rooms? A. I teach them how to square a room, how to plumb it.

Q. What method do you use to teach them how to square a room? A. I use three different methods.

Q. You teach them three different methods? A. Yes, sir. I teach them to use a regular wooden square, the right-angle triangle method, and the center line method.

Q. Now, in connection with your classroom work, are there texts or books that you use? A. Yes, sir.

Q. What books do you use, can you recall offhand? A. I use the "Practical Plastering Skills" by Brandon and Knowles. Also the book by Dalton. It's for plasterers

and cement masons. I use a blueprint book. I believe it's by Dizell.

Q. What materials are the plasterers taught to work with? A. We are taught to work with lime and guaging plaster, [1175] molding plaster.

Q. Gypsum? A. Gypsum plaster, and cement.

Q. And what do you mean by cement, Portland cement? A. Portland cement.

Q. How about keen cement? A. Yes, sir.

Q. Anything to do with acoustics? A. Acoustics, troweled acoustics, blown acoustics, acoustic block.

Q. All right.

What tools do the apprentices use in their training? A. Hawk and trowel, level, a square, plumb bob, chalk line, miter tools, pointing trowel and margin trowel.

Q. Square? A. Yes, sir.

Q. Ruler? A. Yes.

Q. Now, is there anything taught the apprentices in connection with their relation on the job with other trades? A. Yes, sir.

Q. Could you tell me what you teach them in that connection? A. Well, we teach them how to cooperate with each of the other crafts. We are closely connected with the lathers, the plumbers, the tile men. Lots of times the acoustic ceiling [1176] block men.

Q. All right.

And in what way do they have to cooperate, say, with the plumber and the tile setter? A. Well, on the plumber, when he sets his fixtures, lots of times he gives us a measurement that he has to have to work by, and the tile setters, we have to plumb and square their work to see that it is right.

Q. Now, in connection with—well, you teach them how to apply—let's take a wall of Portland cement plaster that tile is going to go on. A. Yes, sir.

Q. Do you understand me? A. Yes, sir.

Q. All right.

You teach them to put on a scratch coat, would you? A. Yes, sir.

Q. Then a brown coat? A. Brown coat.

Q. And how would you teach them to put on the brown coat? A. Teach them to run screeds on their wall, be sure that they are plumb. If it has to come over another wall then it must be square.

Q. O. K.

Then they would fill in between the screeds? [1177] A. Block in with a hawk and trowel, apply their mortar between the screeds.

Q. What would they do after they put the mortar between the screeds? A. Between the screeds, they rod it and darby it or shingle float it.

Q. O. K.

Now, in connection with your classroom work, do you do practical plastering work right in your shop or your classroom building there? A. Yes, sir.

Q. Could you tell me how you go about it, I mean, you have some sort of mock-up or something that the boys work on? A. Yes, sir, we have a room built there that is twenty by twenty.

Q. And they work on that? A. They are working on that, yes, sir.

Q. Now, in connection with your teaching the apprentices the plastering trade, do they have to do any elaborate type work or do you teach the many elaborate molding or crafting? A. Yes, sir.

Q. Could you explain that to me, what you do teach them in that connection? A. I teach them how to take a mold off a blueprint, how to cut out the template, how to hoist the mold, how set it up, [1178] how to lay it out and how to run it.

Q. These are molds made out of plaster or— A. These are molds that are made out of plaster and are run in place with a template.

Q. And what are they building here, cornices and things? A. Cornices.

Q. Where would you use those? A. Theaters, hotel lobbies. They could be used any place.

Q. Are those what we see sometimes near ceilings, elaborately carved things running around ceilings or around the center light fixtures in theaters, is that what we are talking about? A. Yes, sir.

Q. And your boys are taught that work? A. Yes, sir, they are also taught how to cast molds of things. Suppose someone wants an elaborate piece of work, then they know how to cast it and make it right in place on the job.

Q. They can cast the mold right there? A. Yes, sir.

\* \* \* \* \*

Q. (By Mr. Capuano) I show you what has been marked P-31 and ask you if that is the Dalton book that you said you use in your program? A. Yes, sir.

[1179] Q. And does this book show some of that, the type of work that you teach the apprentices to do? A. Yes, sir.

\* \* \* \* \*

[1187] **Purl Guy Thompson**

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

#### Direct Examination

Q. (By Mr. Capuana) Mr. Thompson, are you a plasterer? A. Yes.

Q. And by whom are you employed? A. Tobin & Rooney.

[1188] Q. In what capacity? A. As a foreman.

Q. And how long have you been a plasterer? A. Twenty years.

Q. And approximately how long have you been a foreman? A. About, approximately eight.

Q. And has that all been for Tobin & Rooney? A. Yes, sir.

Q. Now, in connection with your work as a plastering foreman for Tobin & Rooney have you installed jobs where your plasterers put up the plumb coat of mortar for the installation of tile? A. Yes, sir.

Q. Did you do the work on the Humble garage? A. Yes, sir.

Q. And is that here in Houston? A. Yes, sir.

Q. Approximately when was that? A. That was approximately '62.

Q. And what work did your plasterers do there behind the tile? A. We scratched it over the wire, metal lath, and then it was a lot of masonry walls, which we put the one coat of brown coat on.

Q. And then how did the tile setter put on his tile? [1189]  
A. It was the thin-set method.

Q. Over your brown coat?

Hearing Officer: Who was the tile contractor?

The Witness: Texas State and Terrazzo.

[1207]

**Joseph T. Power**

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

Hearing Officer: Would you give the court reporter your name?

The Witness: Joseph T. Power.

[1208] Q. (By Mr. Capuano) Mr. Power, will you please tell us what your position is? A. Executive Vice-President, Plasterers and Cement Masons International Association.

Q. And is that the International Union to which Local 79 is a subordinate body? A. Yes, sir.

Q. Where is your office? A. Washington, D. C.

Q. All right.

Could you tell me in connection with your job as Executive Vice-President what are your duties? A. Assist the



general secretary-treasurer and general president, also serve as secretary of the National Apprenticeship Committee.

Q. All right.

I show you what has been marked P-30 and ask you if in connection with your position on the National Apprenticeship Committee you had anything to do with the preparation or promulgation of P-30? [1209] A. Yes, sir.

Q. Would you tell me what that is? A. Well, this committee is made up of contractors and also officials of the Plasterers International Union. I serve as secretary of the committee between the two organizations, namely, the Plastering Contractors Association, the Plasterers and Cement Masons International Association. We drew up these specifications which were in turn submitted to the Bureau of Apprenticeship Training, Department of Labor, and they in turn printed these and we circulated them throughout the United States to our local unions.

Q. All right.

Now, did you, yourself, go through an apprentice program? A. Yes, sir, I did.

Q. Was that a plasterers' apprentice program? A. Yes, sir.

Q. You are a plasterer by trade? A. Yes, sir.

Q. Where did you go through your program? A. Chicago, Illinois.

Q. Now, I show you what has been marked as T-20, and ask you if the Plasterers' jurisdiction is set out in that Constitution? A. Yes, sir, it is.

Q. Could you tell me what page? [1210] A. 117, Section 118.

Q. And could you tell me if it includes the preparation of walls to receive tile? A. It most certainly does.

Q. What is the number of that exhibit? A. T-20.

Q. Now, could you tell me generally what the conventional method of setting tile is over metal lath? A. Yes, the plasterer would apply the first coat or scratch coat of

motar to the wire lath to stiffen the base so that the second coat, which is called the brown coat, or plumb coat, can be applied. This brown coat is a true and plumb coat and is there for the tile setter then to apply a setting bed.

Q. The plasterer to apply the brown coat and then the tile setter to apply his setting bed for his tile? A. Yes.

Q. And his setting bed would be made of what? A. In the conventional method, Portland cement.

Q. And any other materials? A. Sand.

Q. Sand? A. Basically the same material as what the plasterer would apply in the scratch coat and brown coat.

Q. I see.

[1211] Then in the thin-set method over metal lath what would be the situation there? A. The plasterer would prepare the wall by plumbing it, by rodding it and squaring it, and after that operation is completed the tile setter would come in with a material similar to Tec, L. & M. or Crest, which would be his setting bed to set his tile.

Q. How would the plasterer, what coats would the plasterer use to plumb, rod and square? A. Well, if it was on wire lath he would have to scratch it. If it was on a masonry foundation he would only have to put the one coat on, the brown coat.

Q. And over a metal lath he would put the brown coat over the scratch, is that right? A. That's right.

Q. Now, Mr. Power, did you cause some pictures to be taken depicting the installation of tile in these two methods? A. Yes, sir, I did.

Q. Were you present when the pictures were taken? A. Yes, sir, I was.

Q. Did you make notes on the back of the pictures since then? A. Yes, I have.

Mr. Capuano: May we go off the record for a moment?

Hearing Officer: Off the record.

[1212] (Discussion off the record.)

Hearing Officer: On the record.

Mr. Capuano: Will you mark these, please?

(The documents above-referred to were marked Plasterers' Exhibits Nos. 34-A through 34-O for identification.)

Q. (By Mr. Capuano) Mr. Power, I show you these exhibits marked 34-A through -O and ask you if these are the pictures that were taken at your direction? A. Yes, sir.

Q. Could you tell me where they were taken? A. They were taken in the Apprenticeship School in the District of Columbia, Washington, D. C.

Q. Apprenticeship School of what craft? A. The Plastering Apprenticeship School.

Q. And is the boy we see depicted in these pictures, who is he? A. He was one of the apprentice plasterers.

Q. All right.

Attending the school? A. Yes, sir.

Q. And, of course, you appear in many, if not all, of them, don't you? A. Yes, sir. I think I am in every one of them.

Q. Now, did you use an actual wall or what did you use in [1213] these pictures? A. It's a mock-up of a wall.

Q. All right.

Now, I am going to show you P-34-A and ask you to tell us what that is. A. Well, this mock-up of a wall shows wire lath being attached to a two-by-four wood frame. It could have been attached to metal studs. However, in this case, to expedite what we are trying to show here, it was put on wood studs and this is wire lath, and it shows the apprentice plasterer getting ready to apply the first coat or scratch coat of mortar to the wall.

Q. All right.

And did you make notes on the back which basically said what you just testified to? A. Yes, sir.

Q. Describes what the picture is, is that right? A. Yes, sir.

Q. All right.

Now, I show you P-34-B and ask you what that depicts.

A. Well, this shows the apprentice boy applying the first coat of Portland cement mortar, which is known as the scratch coat.

Q. And what is the purpose of that scratch coat that he is applying on there? [1214] A. Well, the purpose of the scratch coat is to stiffen the wire so that the second coat or the brown coat, or plumb coat, can be applied.

Q. All right.

And I show you P-34-C, and ask you what that picture depicts. A. Well, this picture depicts that the entire area was scratched in with Portland cement mortar, the first coat, and the boy, the apprentice plasterer is using a scari-fier to scratch the surface.

Q. Now, I show you what is marked as P-34-D and ask you what that depicts. A. Well, this depicts that the scratch coat has been put on and now the plasterer is getting ready to put in his screeds and plumb the surface.

Q. Now, would he immediately begin putting on those screeds right after he put on the scratch coat or has there been some time lapse in your pictures here? A. Well, you have to understand there is a time lapse in here. The lines have been established by squaring the room, whether he had used the right angle method, three, four, five, six or eight, ten, or whether he had used the method of, the center line method of squaring the room, and what he is doing there is actually bringing up a plumb line from the floor up the wall. In other words, if this picture had shown the wire [1215] lath running down to the floor you would see that he would be bringing that line all the way up. However, at this point he is just putting the mortar on.

Q. He is making the screed out of mortar? A. Making the screed out of mortar. He could have taken a wooden block, put a dab of plaster on the wall in the corner first, stuck a wooden block in there, which would be the line on the floor, and then plumb up another, up to another block up at the height of the straight edge by putting a dab at

the top, making those two plumb, and then take this mortar fill in between the two blocks, press his straight edge in and form his plumb screed.

Q. Are you saying he could use wood to make a screed, is that what you mean? A. Yes, he could.

Q. All right.

And here he is putting on a vertical screed, is he? A. That's right.

Q. And it's assuming that the wall has been plumbed, plumbed to the floor, and squared, is that right? A. That's right.

Q. And I show you P-34-E and ask you what that is? A. That shows the boy taking a straight edge and a level and plumbing that screed.

Q. The vertical screed he just applied? [1216] A. Right.

Q. I show you P-34-F and ask you what that shows. A. This shows the boy moving down the wall and again this being a mock-up, you have got to visualize that he has moved these down to the length of this straight edge, and he is now putting in another screed the length of that straight edge, which is also again taken from the plumb line to bring that wall true and plumb.

Q. This is parallel to the other vertical screed? A. Yes, sir.

Q. Now, I show you P-34-G and ask you what that represents? A. This, again being a mock-up, this shows that the plasterer apprentice is screeding off horizontal screeds.

Q. And they meet the two vertical screeds? A. They meet the two vertical screeds.

Q. Is there one at the top and one at the bottom? A. One at the top and one at the bottom.

Q. Is he doing anything else there besides just putting on these creeds? What is the boy actually doing? A. He is taking a straight edge now and rodding from one plumb screed to another plumb screed to get in the horizontal screed.

Q. And what is he using on the rod? A. Well, there is a level on the rod at that point, but he is not using it there.

[1217] Q. O. K. A. See, the level is attached to the rod so that he can plumb the wall and be sure that it's true.

Q. I see. O. K. I show you P-34-H. A. Well, this shows the plasterer applying Portland cement mortar in between the screeds. In other words, he is filling in now or flanging in the mortar, and you will notice it's going over the scratch coat.

Q. That he applied earlier? A. That he applied earlier.

Q. O. K.

And I show you P-34-I and ask you what that picture shows? A. This shows the plasterer again flanging in the wall area in between the screeds which have been plumbed.

Q. And P-34-J. A. This shows the apprentice boy with his straight edge and a level checking the plumb of his wall.

Q. O. K. A. You have got to remember that this has all been squared off another wall or at least we are making believe that it has for this mock-up presentation.

Q. O. K. And I show you P-34-K. A. This shows the apprentice boy holding a scratcher in his hand and scratching the second coat or plumb coat of mortar [1218] which is for the setting bed for the tile setter.

Q. You mean the setting bed will go on top of that? A. The setting bed on the conventional method now will go on top of that.

Q. And I notice that you did not or he did not carry the plumb coat all the way over. Is that so we could still see the scratch coat in there? A. The scratch coat and the second coat or plumb coat of mortar.

Q. O. K. A. Brown coat.

Q. Now, I show you P-34-L and look at that and tell me what is now happening. A. Well, you will have to assume from this picture now that this is where the work operation has stopped and this—

Q. You mean as far as the plasterer is concerned? A. As far as the plasterer is concerned. This is what the plasterer has from the 1917 agreement in his jurisdiction, the scratch coat and the brown coat for the plumbing, rodding and squaring of walls. And he would stop at this point.

And this plasterer apprentice here is acting as a tile setter and the purpose of this is to show the function of what a tile setter would do at this time.

Q. All right. And you are talking of P-34-L? A. Right.  
[1219] Q. Now— A. He is putting on his wood screeds, which are to maintain the plumbness for his tile.

Q. What are those wood screeds made of? A. It looks and appears to be, and I know what it was, it was a lattice strip, probably three-sixteenths of an inch.

Q. All right.

This plasterer apprentice is putting them on but he is doing it as if he were a tile setter? A. That's right, because we don't claim that.

Q. O. K.

Now, would the tile setter come immediately after you put on your brown coat to put his screeds on or would there again be some time? A. There would be a time lapse involved.

Q. What would have to happen to your brown coat? A. It would have to get firm and set for him.

Q. O. K.

Now, I show you P-34-M and ask you what that picture depicts? A. Well, this depicts again the first and second coat, plumb coat, that the plasterer applied in a certain section, now has been rodded in between the strips to show that this is the setting bed which the tile setter would set his tile in. That is in the upper portion of the picture.

[1220] Q. Just a moment. I am going to have you mark something there.

Now we are talking in P-34-M about—this would be a conventional method installation, right? A. This is a conventional method of applying tile.

Q. All right.

Now, put an A on P-34-M, capital A, in the area that still shows the scratch coat. A. Are you referring to the plasterer's first scratch coat?

Q. Yes. A. (Witness complied.)

Q. All right.

And put a B in the area that shows the plasterer's plumb coat. A. Right. (Witness complied.)

Q. And put a C in the area which shows the tile setter's setting bed. A. (Witness complied.)

Q. You did? A. Yes, sir.

Q. O. K.

Now, I show you P-34-N and ask you what that depicts? A. This depicts again the plasterer apprentice acting as a tile setter, and he is now setting the tile into the setting bed.

[1221] Q. That he would apply, that the tile setter would apply, is that what you mean? A. That's right, yes.

Q. And would the tile setter normally start in the middle of a wall, as we have it here? A. Oh, no, this again is just a mock-up, and it's to show what is happening.

Q. O. K. A. And the operations.

Q. Now, I show you what has been marked as P-34-O and ask you if you can tell me what this is, now? A. Yes, this shows a thin-set of mortar being applied over the plasterer's plumb coat, and that thin-set of mortar is the setting bed which is used to set the tile.

You have in this picture a first coat, a scratch coat, because of it being wire lath.

Q. Now, would you mark that with an A in the scratch coat? A. (Witness complied.)

Q. Now, who would put that coat on? A. The plasterer would apply that coat.

Q. All right.

Now, this picture is now depicting the thin-set method, is that right? A. Yes.

Q. Of installation of tile? [1222] A. Yes.

Q. All right.

Now put a B on the plasterer's plumb coat. A. (Witness complied.)

Q. And put a C on the thin-setting bed. A. (Witness complied.)

Q. O. K.



Now, we show that and apparently there is a piece of tile imbedded in the thin-setting material. A. That's right.

Q. O. K.

And the thin-setting bed material is the white part of the picture? A. That's right, it's material similar to Tec, L. & M. or Crest, or any of the other setting bed materials used to set tile.

Q. Now, I notice that C has, the white area, the thin-set material, as you called it, has a lot of lines in it. What caused those lines? A. It was put on with a serrated edge trowel.

Q. I see. O. K.

Now, I notice B is scratched. Is that— A. Well, there is a purpose for that because if the specifications were changed from a conventional method of setting tile to a thin-set method the scratch coat, the [1223] scratches were in there for the conventional tile.

Q. I see. A. Conventional method of setting tile. I wouldn't scratch it if it was going on a thin-set and you knew it beforehand.

Q. I see. A. But—

Mr. Shepherd: Can we see them when you get through?

Mr. Capuano: Yes.

Hearing Officer: These were introduced, or they were marked, they haven't been received as yet.

Mr. Capuano: Yes.

Hearing Officer: Do you want to receive them?

Mr. Capuano: Yes, I would. You know, I usually wait until the end, but I would like to move the admission, since I am going to have a lot of exhibits, I think it would be just as well to move their admission as we go along. I would like to move the admission of 32—

Hearing Officer: 34-A through -O.

Mr. Capuano: 34-A through -O.

Hearing Officer: Are there any objections to the receipt of those exhibits?

Miss Thacker: No objection.

Hearing Officer: They are received.

(The documents above-referred to, heretofore marked Plasterers' Exhibits Nos. 34-A through 34-O, were received in evidence.)

[1224] Mr. Capuano: May I use them? I want to ask him some more questions about them, if I may.

Miss Thacker: Do you want all of them?

Mr. Capuano: Yes, I would. I will give them right back. I am just going to ask a couple of questions.

Miss Thacker: Oh, I thought you were through.

Q. (By Mr. Capuano) Now, Mr. Power, looking at 34-N and -O, is there any difference in the work that the plasterers would perform up to the point of the tile setter putting in the setting bed, mortar setting bed, in 34-N and up to the point the tile setter putting in the setting bed in 34-O, other than the fact about the scratching, now, you told us about in 34-O? A. No.

Hearing Officer: Now, these are being offered to depict the procedure that is used up through the laying of tile?

Mr. Capuano: That's right.

Hearing Officer: It doesn't purport to show any skills or anything of that nature?

Mr. Capuano: No, it doesn't purport to show the skills.

The Witness: No.

Hearing Officer: O.K.

Q. (By Mr. Capuano) Now, are you familiar with the 1917 agreement in the green book? A. Yes, sir.

Q. That is in T-4. If you will get it out there.

[1225] Now, could you tell me whether the two methods we just described are included, are covered by that agreement, of setting tile, I mean? A. Yes, sir.

Q. And could you tell me on what you base that statement? A. Well, for the simple fact that the agreement provides that the plasterers shall prepare all walls and ceilings which are to receive tile, and they have to plumb, rod and square the wall before the tile can be set.

Q. That would be thin-set as well as the conventional, then? A. Yes, sir, it would, because again the agreement specifically states that the plasterers shall plumb, rod and square the walls which are to receive tile.

Now, if they are going to stick tile over wallboard or some other material, he puts on his thin-set mortar bed, sticks his tile. We have no claim for it whatsoever.

Q. By he you mean the tile setter? A. Tile setter.

Q. Now, Mr. Power, are you a regular member of the Joint Board? A. Yes, sir, I am.

Q. We are talking about the National Joint Board for the Settlement of Jurisdictional Disputes, is that right? A. Yes, sir.

Q. When did you become a regular member? A. About twelve days ago.

[1226] Q. April 1? A. April 2, I think it was.

Q. Of 1967? A. Of this year, yes, sir.

Q. Now, since the reorganization of the Board have you served in any other capacity? A. I served as an alternate member?

Q. Now, could you tell me when the reorganization took place, approximately? A. It happened in a ceremony in the White House on February 2, 1965.

Q. All right.

And in connection with the reorganization of the Joint Board could you tell me what changes were made over the old board into the new board? A. Well, the old board required that a contractor in making an assignment of work was obligated to make his assignment in accordance with decisions of record, agreements of record, trade practice, and the area practice. That portion of making assignments was carried over to the rejuvenated board. However, the Joint Board in awarding a decision no longer was obligated to make decisions in accordance with decisions of record, agreements of record, trade practice, or prevailing practice, or area practice in the area.

Q. Now, do you mean in that order they no longer had to do it? [1227] A. That is correct. They were obligated

to give consideration to the public and serve the best interests of the construction industry and give equal weight to efficiency and economy, and if any one of these four or five items I just mentioned was felt to be the method of resolving a dispute, that would be their decision.

Q. And prior to the reorganization the Joint Board was required to go down the line using each one in order?

A. Right, yes, sir.

Q. What would be the first one, decisions of record? A. Decisions of record, agreements of record. If there was no agreement of record then they would go to trade practice and if there was a gray area there they would go to area practice.

Q. And now they can use any one that they want? A. Any one that they want.

Q. O.K.

Now, was there any change in the number of members, board members? A. Yes, the Board was reduced from sixteen down to eight. There are four labor members on the Board, two regulars, two alternates, and there are four contractors on the Board, two from the A.G.C., and then from the specialty and mechanical trades, and that constitutes the Board. The alternate members—

Q. Wait. How many are on the Board now, eight or four? [1228] A. Four. There's two regular and two alternate for each group.

Q. You mean two labor representatives and two employer representatives? A. Right, and each labor group has an alternate.

Q. And each employer group has an alternate? A. Has an alternate, yes, sir.

Q. So there are four regular members and four alternates? A. Yes, sir.

Q. Now— A. In other words, the Board was reduced from sixteen and a chairman down to eight and a chairman.

Q. Now, were there any other changes? A. Yes, there were.

Under the old system in case a disputant union was not satisfied with the decision of the National Joint Board

they could request a reconsideration of the case or they could ask for an oral hearing, and they had to go back to the very same men who heard the case the first time.

Under the new formation of the Board they set up an Appeals Board which a local union who is still not satisfied with a decision of the Board can appeal to this Appeals Board. He still has the right, if he desires, to ask for reconsideration or an oral hearing from the Joint Board, but he has this added step, to take his case directly to the Appeals Board.

[1229] Q. And can employers appeal to the Appeals Board, too? A. Yes, sir.

Q. Who is the chairman of the Appeals Board? A. Mr. Dunlap, John Dunlap.

Q. Now, is he representing either management or labor on the Board? A. He is the impartial chairman of the Board.

Q. And how many other members are there? A. The same make-up as what constitutes the National Joint Board.

Q. O.K. A. Four from labor and four from management.

Q. Now, could you tell me generally how the disputes go before the Joint Board, or gets before the Joint Board? A. Yes, sir. A dispute arises in a given area. The local business agents are first to try to attempt to resolve this dispute, themselves. In the event the business representatives in that area are unable to resolve the dispute it is referred, then, to the International Association. Most international unions have a filing form which they require local unions to submit, which gives them the information regarding the dispute.

Once the filing form comes into our office, we then send a telegram to the other international union asking them to assign a representative of their choosing to meet at the job site with the representative from our organization. And they [1230] go to the job site and try to attempt to adjust this dispute.

If they are unable to adjust the dispute, we are notified and we then take the case and process it before the National Joint Board. We do that by writing a letter to the Chairman of the Joint Board outlining in it in detail to him the name of the job, the contractors involved, and the basis of the dispute and the reason why we are claiming them, and asking him that he place that dispute on the agenda of the next meeting of the National Joint Board.

The Joint Board receives the dispute and the Chairman of the Board through his office then notifies the other international union that the union requesting the decision, that the union requesting the decision has asked for the decision to be placed on the agenda of the next meeting, and they are requested to submit their information regarding the dispute.

The Joint Board Chairman of the Board again through his office personnel writes to the contractors involved, asking him, or them, the general contractor and the prime contractor, for their position regarding the dispute.

So that you have, then, all interested parties to the dispute having the opportunity to present their position before the Joint Board.

Q. Now, would the Joint Board notify an employer who was not bound by the Joint Board procedures? A. Yes, they would.

[1231] Q. Now, your union, is that bound by the Joint Board? A. Yes, it is.

Q. Do you know whether the B. M. & P. I. U. is bound by the Joint Board? A. Yes, they are, and all unions affiliated with the Building and Construction Trades Department are bound by it.

Mr. Capuano: Would you mark this, please?

(The document above-referred to was marked Plasterers' Exhibit No. 35 for identification.)

Q. (By Mr. Capuano) I show you what has been marked P-35 and ask you if you can tell me what that is. A. This

is the Constitution of the Building and Construction Trades Department of the AFL-CIO.

Q. Now, could you tell me why you say all unions affiliated with the Building Trades Department are bound by the Joint Board? A. Yes, because Article X in the Constitution of the Building and Construction Trades Department requires that any organization affiliated with the Department must use the National Joint Board as its vehicle to resolve disputes. I don't have the exact phraseology, but when I find it I can give it to you.

Q. Page 28, is that right? A. That's right.

Q. All right.

Now, could you tell me if the Joint Board will decide a [1232] dispute, jurisdictional dispute, between two unions even if the employers are not bound or stipulated? A. Yes, they will because the local unions affiliated with the International Unions are stipulated to abide by the provisions of the National Joint Board for the Settlement of Jurisdictional Disputes.

Q. In accordance with what you just quoted from the Building Trades Constitution— A. Yes, sir.

Q. —or stated about it? A. Yes, sir.

Q. Now, you mentioned earlier decisions of record and agreements of record.

Would you take decisions of record first and tell me what they are? A. Well, decisions of record are applicable to all crafts. Agreements of record are only applicable to the two unions involved.

Q. And are agreements of record and decisions of record published any place? A. They are published in what is known as the Green Book.

Q. So would you look on page 104 of T-4? Do you see it? A. Yes, sir.

Q. Is that the decision of February 21, 1924? A. Yes, sir, it is.

[1233] Q. And that is the decision we have been discussing here during this case? A. Yes, sir.

Q. And is that what you just described as a decision of record? A. That is what is known as a decision of record.

Q. And the 1917 agreement on Page 32 would be what?

A. An agreement of record applicable only to the B. M. & P. I. U. and the O. P. & C. M. I. A.

Q. Now, would you be able to tell me approximately how many cases the Joint Board decides in a year, average year, say, since the reorganization? A. About four hundred cases a year.

Q. They render four hundred decisions, then? A. Yes, sir.

Q. Now, are there any revisions on your voting in a case in which your union is involved? A. I have no vote. I can't be in the room.

Q. Could you explain this a little more for me, please?

A. Yes, if our organization is involved in a dispute and I am a member of the Joint Board, I would be allowed to present our side of the case to the National Joint Board along with a representative of the other disputing craft.

Q. What do you mean, in an oral argument type? A. In an oral argument, in oral argument. And after both [1234] sides have been heard and rebuttals have been heard, we then would be ordered out of the room while the other members of the Board vote.

Q. And if you have a case, do one of the alternates then sit in your place if you are a regular member? A. Yes, sir, they do.

Q. And I assume when you were an alternate you did the same thing, sat in for regular members whose unions had cases? A. That's right. An alternate has no vote. It's only the regular members that vote.

Q. I see. Does an alternate have a vote when he sits in for a regular member? A. Oh, yes, he moves up then.

Q. If a union who had a regular member on the Board had a dispute the regular member would not vote on it but one of the labor alternates would take his place for that case— A. That's right.

Q. —is that what you are saying? A. Yes, sir.



Q. Now, you say you have just been made a regular member April 1st. A. Right.

Q. Is that membership permanent? A. No, it's not. They rotate the members.

Q. Among whom? [1235] A. Among the contractors side and the labor's side.

Q. You mean from different unions? A. Different unions.

Q. Now, other than the two alternates that you just mentioned as being on the labor side, are there any other alternates? A. Yes, there are, the president of the Building Trades Department submits a list of other international unions and names of representatives which have been given to him by the general president of that organization to be ready in the event an alternate or regular member didn't appear, and there wouldn't be a quorum for that date.

There is also on the contractors side the very same thing, a list of names of alternates who would take the place in the event the alternate or regular member of that group would be absent or out of the city or unable to attend for some reason.

Q. In other words, you mean if the regular members and the alternates, say, on the labor side, if both the regular member and alternate member couldn't be there one of these additional alternates would take his place? A. Yes, sir.

Q. Now, do you know whether there is any person in the B. M. P. I. U. who serves as one of these alternates? A. They have a representative, the B. M. P. I. U. has a representative serve from time to time.

[1236] Q. Who is that? A. Mr. Conners.

Q. What is his position? A. The secretary-treasurer.

Q. And do you know if he has in fact served on the Board as an alternate? A. Yes, he has.

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[1237] Q. (By Mr. Capuano) Mr. Power, did your union submit a dispute to the National Joint Board in connection

with the Anderson Library job at the University of Houston? A. Yes, sir, we did.

Q. Now, I am going to show you a group of exhibits, P-36-A through -U, and they go in chronological order with the oldest on the bottom. And I will ask you if you can just look at that set of exhibits and tell me what it is. Keep them in order, would you, please? A. It is the file from the National Joint Board.

Q. Is that the full Joint Board file? A. I would say so.

Q. On what case? A. On the University Science Building, Anderson Library.

[1238] Q. O. K.

Now, when did the Joint Board make its initial decision in this case? A. I believe it was, it's in the file here, but I believe it was on the 9th that they made the decision.

Q. 9th of what? A. November.

Q. '66? A. Yes, sir.

Q. It would probably be towards the bottom of the pile. A. I will check the date.

It was on the 9th of November, 1966 in a letter sent out dated November 10th.

Q. And that is P-36-F, is that right? A. Yes, sir.

Q. All right.

Now, after that decision did you have any correspondence or did your union have any correspondence with the Joint Board concerning compliance with the decision? A. Yes, we did.

Q. Let me ask you this first, in whose favor was the Joint Board's decision of November 10th? A. In favor of the Plasterers.

Q. All right.

And later did you have correspondence with the Joint Board [1239] concerning compliance? A. Yes, we did.

Q. And what was the reason for that? A. Well, there's a telegram in here in this file, but without even reading it in essence it said they were complying with the decision rendered by the Joint Board.

Q. Who said that, who sent that telegram? A. McHargue, I think, is his name.

Q. Prior to McHargue's telegram did the O.P. have any correspondence with the Joint Board concerning compliance with the decision? A. Well, it was because of the telegram and complaints from our Local Union that they were not complying with the decision that we then wired the National Joint Board several times to tell them that they were not complying, to again direct the contractor and the local union to comply with the decision of record.

This wasn't done, and this brought about the results of we, then, because of the telegram sent by McHargue, asked for a clarification of the decision.

Q. All right.

Now, are the various telegrams that you sent to the Joint Board included within this file that you have in front of you? A. I believe they are.

Q. And is McHargue's telegram in there, too? [1240]

A. I believe it is. Here is our telegram requesting the clarification.

Q. Which exhibit is that? A. Exhibit 36-Q.

Q. All right. A. Then here is our telegram stating that they are in compliance.

Q. They were in compliance? A. That they were not in compliance. We notified the Board that the telegram that they had received from Mr. McHargue indicating the Tile Setters 20 contends they are not in compliance is in error and erroneous, and we asked the Board on the date indicated on the telegram that the Board direct the contractor and Tile Layers Local 20 to abide by the decision rendered on November 9 which was to the Plasterers.

Q. And you are reading from what exhibit number? A. P-36-O.

There is that telegram from McHargue (indicating).

Q. The telegram from McHargue you were referring to is what exhibit number? A. 36-L.

Q. P-36-L? A. P-36-L.

Q. All right.

Now, after you sent your telegram to the Joint Board [1241] requesting a clarification of the decision did you send a letter to the Joint Board as a follow-up to that telegram? A. Yes.

Q. Is the letter included in that file? A. Yes, here it is, and that is marked Exhibit 36-T.

Q. And what is the date of that letter? A. The date of that letter is March 13, 1967.

Q. All right.

And then do you know if after that letter was sent to the Joint Board the Joint Board considered its previous decision? A. Yes, it clarified it.

Q. Was that a meeting of the Joint Board? A. Yes, it was a meeting of the Joint Board.

Q. And then did the Joint Board—well, they did render a decision on March 15, right? A. That's right.

Q. And that is also in this file? A. Yes, sir, it is.

Q. And that is marked as— A. P-36-U.

Q. All right.

Now, do you know if the B. M. P. I. U. submitted any correspondence to the Joint Board in connection with this dispute on the Anderson Library? A. Yes, they did.

[1242] Q. Is that included in the file? A. Yes, it is, and it's marked 36-E.

Q. P-36-E? A. P-36-E.

Q. All right.

And when the Joint Board originally considered that dispute in November do you know if any representative of the B. M. P. I. U. appeared before the Board to argue their position? A. Yes, they did have a representative present to argue their position.

Q. Did the O. P. have a representative to argue their position? A. Yes, the O. P. did have a representative present to argue their position.

Q. Did you vote on that case in the original decision in November? A. I did not.

Q. Now, at the meeting in which the Joint Board clarified its decision, that is, the March 15 letter, P-36-U,

do you know if the B. M. had a representative at the meeting of the Joint Board which resulted in that March 15 clarification? A. Yes, they did have a representative present.

Q. Did he argue the B. M.'s position? A. Yes, he did.  
[1243] Q. Did the O. P. have a representative present? A. Yes, they did.

Q. Did he argue their position? A. Yes, he did.

Q. Did you vote in that decision? A. Absolutely not.

Q. And I am speaking of the clarification there. A. Absolutely not.

Q. Now, did the March 15 clarification change or alter the original decision of the Board or change the award to another craft? A. It did not.

Q. The award was still to the Plasterers? A. The award was still to the Plasterers, clarifying its decision of November 9th.

Q. All right.

Now, was this file that you have in front of you obtained from the Joint Board, itself? A. Yes, it was.

Q. Could you tell me, are those files available, the Joint Board files? A. They are available to anybody, anyone affected with the dispute after the case is decided.

Q. All right.

Now, we talked about an appeals board earlier. Do you know [1244] if the B. M. P. I. U. filed an appeal with the Appeals Board from either the November, or let me ask this, did the B. M. file an appeal to the Appeals Board from the November 9th decision? A. They did not.

Q. Did they file an appeal to the Appeals Board from the March 15 decision? A. They did not.

Q. Or clarification, I should say.

And are there time limits in which you must file an appeal? A. Yes, there is.

Q. What is the time limit? A. Ten days.

Q. After the decision? A. Right.

Q. So the time has elapsed on both, then? A. That's right. I might point out, when I file for an appeal the

contractor who has made the assignment keeps his assignment in effect.

Q. He would keep his regular assignment in effect?

A. Keeps his assignment in effect pending the decision of the Appeals Board. If they accept the appeal the assignment continues as is even though the Appeals Board had awarded the work to the Plasterers.

Q. Do you know if the B. M. asked the Joint Board for [1245] reconsideration of either of its two— A. They did not.

Q. O.K.

I am speaking of either the November 10th decision or March 15 clarification. A. They did not.

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[1255] Q. Now, do you know of any place in the rules or in the green book that gives the Board the right or the power to make that contractual agreement between the parties? A. Well, the Board interprets these agreements, and they have to do it in light of the changes that go into a building today. I might give you an example. For example, say water was running through a plastic pipe instead of a galvanized or copper pipe. Would they say or anybody else say that this wouldn't be the plumber that would put that pipe in? Would some other organization then come up and state that "I am going to claim it because it's not pipe"?

\* \* \* \* \*

[1256] Q. You are not aware of any, then, that gives them the power to add to or delete from a contract between two unions? A. I don't know where it would be in the green book or rules or regulations. All I can say is what I said to you a few minutes ago, that the Board has to interpret agreements in light of the technological changes that exist today in the building and construction industry.

\* \* \* \* \*

[1261] Q. But now I am not asking you whether they will or not. I am asking you what the Board says the

responsibility of the plasterer is. The Board has deleted that word which we contractually agreed on, is that right?

A. Yes, ma'am.

Q. All right. A. But you also have to remember that this is a function that is set out in this agreement, what the plasterers will do.

Q. In the green book, you are referring to? A. Right. Scratching is a function. Plumbing is a function.

Q. Yes. A. Rodding is a function.

Q. Right. A. Squaring is a function.

Q. That's right. A. And the tile setter on his end of it will set his final setting bed.

Q. That's right.

Didn't you say scratching was a function, as well? Didn't you name it, four of them, again? A. I will repeat it for you. I said one of the functions [1262] was scratching.

Q. I thought you did. All right. A. Another function is plumbing. Another one is rodding. And another one is squaring the walls.

Q. All right.

Now, then we are in agreement, you and I, that there has been added to the contractual agreement between the parties by the Board in telling the tile setter when he is to put his tile on? Are you and I in agreement on that? That has been an addition to the agreement. A. The Joint Board's decision is very clear.

Q. Now, Mr. Power—

Mr. Capuano: I think he was starting to answer, if you will let him go.

Q. (By Miss Thacker) —answer my question. A. Again, the Joint Board decision was very clear. It stated the work in dispute is covered by the agreement of record of August 22, 1917 and shall be assigned to plasterers except that any coat to be applied wet the same day under the tile shall be placed by the tile setters.

Q. Now, are we in agreement that the time the tile setter is to put his tile on is not contained in the 1917 agreement?

A. No, it's not contained in the 1917 agreement.

Q. All right.

And you and I are in agreement that these are additions [1263] in the Board's decision of November '66 and March '67, you agree with me on it? A. That these functions of plumbing, rodding and scratching—

Q. No, I am on the tile setter's part now, that when he can set his tile has been introduced to us in these two decision letters is an addition from the contract between your union and ours? A. I personally don't believe so.

Q. Well, now, show me, then, in the 1917 agreement where— A. This is getting to be a matter of semantics. It's what interpretation you are placing on it.

Q. No. A. The agreement is very clear. It sets out the functions of both organizations of what to do, and as I said before, that I am sure that any agreement in any organization in this green book, that the members on the Board would have to consider the changes in the building construction and determine where it's affected and where it's not.

\* \* \* \* \*  
[1266] \* \* \* In this method back here he had his setting bed and his float coat. Could he put his tile on that? A. On his setting bed?

Q. Directly, with nothing? A. He could if he wanted to.

Q. He used a neat cement, didn't he, a dope coat, didn't he? A. He did.

Q. All right.

[1267] He is doing the same thing today, isn't he, except there are a few more things on the market that he might use, but he still may use a dope coat, a neat cement, a mastic, an adhesive, a dry-set, to have his tile adhere to his setting bed? A. His setting bed is the Tec, the L.&M. or dry-set materials that you are talking about.

Q. In your opinion?

Mr. Capuano: Well, he is the man on the stand.

Q. (By Miss Thacker) Is that right, Mr. Power? A. Yes, ma'am.



Q. In your opinion you are saying that it is. A. Yes, ma'am. You can take this wall right alongside me here, and give me a piece of tile and I will take the tile, go over to that wall, put it up to it. It will fall right to the floor. In order for you to set your tile you have got to put on this thin-set material and that is what sets your tile to the wall.

\* \* \* \* \*

[1319]

**L. D. McHargue**

recalled as a witness by and on behalf of the Tile Setters, having been previously sworn, was examined and testified further as follows:

\* \* \* \* \*

**Direct Examination**

Q. (By Miss Thacker) Now, you have heard the testimony given. Can you recall any particular job that has been stated as being a thin-set method that you know is not? [1320] A. Yes, I believe yesterday Mr. Saylors made the statement that they browned out the T.S.U. Library addition for the thin-set method, and I know for a fact that we or I, myself, floated these walls and put them up in a conventional manner.

\* \* \* \* \*

[1321]

**Victor Zambon**

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

**Direct Examination**

Q. (By Miss Thacker) Mr. Zambon, did you hear testimony given by the Respondent stating that it was a thin-set on the Humble garage? A. It was float coat on the Humble garage.

Q. Did the Texas State Tile & Terrazzo do this job? A. Yes, ma'am.

\* \* \* \* \*

**EXHIBITS**

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**Plasterers' Exhibit No. 3**

**NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL  
DISPUTES BUILDING AND CONSTRUCTION INDUSTRY**

**815 Sixteenth, Street, N. W., Washington, D. C. 20006**

**STerling 3-6817**

**November 10, 1966**

**In Reply Refer to: TEXAS 11/9/66**

**EDWARD J. LEONARD, General President  
Operative Plasterers' and Cement  
Masons International Association  
1125 Seventeenth Street N W  
Washington, D C 20036**

**THOMAS MURPHY, General President  
Bricklayers Masons and Plasterers  
International Union  
Bowen Building  
Washington, D C**

**SOUTHWESTERN CONSTRUCTION COMPANY  
Contractor  
P O Box 1204  
Houston, Texas 77001**

**TEXAS STATE TILE AND TERRAZZO COMPANY  
Subcontractor  
3115 Golfcrest  
Houston, Texas**

**Gentlemen:**

**At its meeting November 9, 1966, the Joint Board considered the jurisdictional dispute between the Operative Plasterers' and Cement Masons International Association**

and the Bricklayers Masons and Plasterers International Union over the plumbing, rodding and squaring of walls which are to receive tile, Houston University Science Building, Houston Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor.

The Joint Board voted to make the following job decision: The work in dispute is governed by the agreement of August 22, 1917, and shall be assigned to plasterers, except that any coat to be applied wet the same day under tile shall be placed by tile setters. In the thin-set or adhesive method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar that is the scratch coat and plumb coat. The plasterers shall plumb, rod, and square all walls, rod and level all ceilings and the tile setter shall apply the final setting bed for his tile.

This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

WILLIAM J. COUR  
William J. Cour  
Chairman

WJC/lma

cc: C J HAGGERTY—B&CT DEPT  
DALE WITCRAFT—AGC

Plasterers' Exhibit No. 7  
AMERICAN STANDARD SPECIFICATIONS  
FOR  
Glazed Ceramic Wall Tile  
Ceramic Mosaic Tile  
Quarry Tile and Pavers  
INSTALLED IN  
Portland Cement Mortars  
including requirements for related divisions  
approved as  
AMERICAN STANDARD  
by the  
American Standards Association  
October 16, 1958

• • • • •  
PERSONNEL OF SECTIONAL COMMITTEE ON SPECIFICATIONS FOR  
INSTALLATION OF CERAMIC TILE

ASA Project A108

Sponsor: Tile Council of America, Inc.

• • • • •  
Bricklayers, Masons & Plasterers International Union of  
America Shepherd, Robert E.  
• • • • •

FOREWORD E

EXPLANATION AND NOTES

The following explanation and notes are included as an aid to the Architect and specification writer and are not to be copied or considered as part of these specifications.

### E-1. Introduction:

a. **Standard Specifications:** These Standard Specifications for application of: domestic glazed ceramic wall tile with portland cement mortars, A108.1-1958, parts 1-1 to 1-5 inclusive; domestic ceramic mosaic tile with portland cement mortars, A108.2-1958, parts 2-1 to 2-5 inclusive; domestic quarry tile and pavers with portland cement mortars, A108.3-1958, parts 3-1 to 3-4 inclusive are for inclusion in the Tile Division of the Specifications either by copying them or by reference. The specification writer must augment these with special conditions, scope and materials as required by the specific job.

b. **Interpretation and Selection:** The specifications which follow are of the short form or streamlined type and clauses governing their interpretation must be added. Material in italics is explanatory and should not be copied. Bold face type indicates that a selection from several items may be made.

### E-2. Related Divisions; Appendix A:

a. **General:** The quality and cost of any ceramic tile installation is influenced by the stability, permanence and precision of installation of the backing or base material. For this reason the material included in the Related Divisions of this specification should be made a part of the appropriate Related Divisions of the job specifications either by inclusion or reference therein. Also, certain specific operations, which may be performed by one or more trades are clearly assigned to one trade in these specifications to establish responsibility and permit uniform bidding. (See items e, f and g in this section.) If the tile contractor is to perform work herein included in "Related Divisions" this should be indicated in the "Scope" and the appropriate specifications removed from "Related Divisions" and included in the Tile Division.

b. Floor Drains: When using floor drains, pitch should be provided in subfloor by trades such as concrete or carpentry and not with the mortar setting bed.

c. Deflection: Do not specify tile applied over any floor areas with a deflection of greater than  $1/360$  of the span. Allow for live load and impact as well as all dead load including weight of tile and setting bed.

d. Gypsum Backing: When setting tile on walls backed by gypsum plaster, gypsum block or gypsum wallboard, first apply waterproof membrane and metal lath.

e. Leveling or Plumb Coat: Correct walls or ceilings which are out of plane by a leveling or plumb coat. Leveling coats should be scratched, cured and dampened before applying additional coats. This is specified under plastering trade.

f. Bonding to Concrete and Masonry Walls: Concrete and masonry walls which are smooth and glossy, painted or effloresced, or have loose surface material shall be roughened by sandblasting, chipping or scarifying. This is specified under concrete trade.

g. Flashing and Drainage: Exterior wall that are to receive tile either on exterior or interior face should be designed to prevent moisture from collecting behind the tile work. This may require flashing, coping, membranes and/or vapor barriers. The use of weep holes to obtain adequate drainage at base of walls may also be required.

h. Concrete Slabs: Concrete slabs that are to receive a tile finish should be thoroughly cured before tile application is started. Drying shrinkage is dependent upon the mass and proportions of the concrete and the relative humidity and temperature during the curing process. For this reason, it is impractical to specify a time period for curing, but the Architect should assure himself that the concrete has reached a stable condition before permitting tile applica-

tion. Exterior slabs must be supported so that there will be no settlement, excessive deflection or heaving from frost action. For exterior slabs on grade, this may require a porous base with adequate drainage.

i. Concrete Masonry: Concrete masonry that is to receive tile should have properly located control joints unless other effective measures to prevent cracking of masonry are provided.

### E-3. Application:

a. Expansion Joints: Show on drawings expansion joints in all tile work not more than 16'-0" o.c. both ways on horizontal and vertical surfaces and wherever structural expansion joints or masonry control joints occur. All expansion joints to be cut through setting bed to cleavage plane. On dimensionally stable backing expansion joints may be omitted at the discretion of the Architect. Judicious usage of expansion joints is essential on all exterior installations. Note that expansion joints need not be large and unsightly. With normal spacing, joints of  $\frac{1}{8}$  to  $\frac{1}{4}$ " ( $\frac{3}{8}$  to  $\frac{1}{2}$ " for quarry tile and pavers) should be sufficient.

b. Tiled Ceilings: Keep free from vibration and minor shocks as might be produced by moving machinery, hammering or other work on the building structure for at least three days.

c. Light-Weight Mortar: A properly graded light-weight aggregate (ASTM Specification C35) may be substituted for sand. This mortar may be used for scratch coat, leveling coats and setting bed. Always use a dope coat for bonding tile as in other mortar installations.

d. Waterproofed Cement and Admixtures: For refrigerators, cold rooms and exterior applications waterproofed cement or integral waterproofing may be used in the tile setting mortars.

e. **Curing Exterior Tilework:** All exterior tile installations require protection against rapid drying from sun or wind. Impermeable covers such as polyethylene or waterproof paper should be sealed over each stage of work as it is completed. Moistening by fogging or sponging may also be required to affect a proper cure. Wind breaks may be necessary during installation.

f. **Damage to Tilework:** After completion and cleaning, the obligation of the Tile Contractor ceases as to damage or injury which may be done to the tilework by others.

g. **Tile Floors Set in Cement Mortar:** These may be installed on crete slabs, concrete fills or reinforced cement mortar fills. Mortar setting beds over cleavage membranes must be reinforced. In frame structures they may be set on concrete fill (deafening) if proper methods are used and the concrete fill is reinforced with shrinkage mesh.

h. **Roof Decks and Waterproof Cleavage Membranes:** Specify under "Roofing Division" a 20 year guaranty for both built-up roofing and flashing. Do not combine pitch with asphalt saturated felt or vice versa. It is advisable to place the built-up roofing on top of the roof fill (when used). This roof fill should be reinforced and sloped for proper drainage.

i. **Special Acid-Alkali Resistant Grouts:** Some commercial and industrial installations may require special pointing or grouting compounds which will resist prolonged exposure to acids and alkalies. Specify type of grout required. Explicit adherence to manufacturer's directions is mandatory.

#### E-4. Material:

a. **Special Purpose Tile:** Special purpose tile are produced for freezing and thawing conditions; and glazed extra duty tile are produced for use on light duty floors and other surfaces where abrasion or impact is not excessive. Use



only tile recommended for these purposes by manufacturer. On exteriors use only tile recommended by the manufacturer as suitable for the climatic conditions where the tile is being installed.

b. Inspection and Approval: Architects desiring to have special inspection or approval of the tile should specify in 1-1.6c, the procedure that is to be followed. Such inspection and approval shall take place before tile installation.

c. Description of Tile: Specify full description of tile to be used in 1-1.1d, or include schedule if this has not been included in the "Scope".

d. Accessories: Show on the drawings and specify in 1-1.1e, of these specifications.

\* \* \* \* \*

Standard Specification: A108.1-1958 Glazed Ceramic Wall Tiled Installed in Portland Cement Mortars

#### GENERAL REQUIREMENTS (Continued)

##### MATERIALS (Continued)

b. Strip cork, premolded fillers, oakum or inverted "V" copper joints with certified sealers.

(or)

c. Caulking compound material to be certified as satisfactory for this use by manufacturer.

##### 1-1.6 Delivery, Storage and Approval.

a. Deliver, store and handle materials to prevent inclusion of foreign matter and/or water and to prevent damage.

b. Deliver and store packaged materials in original containers with seals unbroken and labels intact until time of use.

c. (Approval of tile before installation to be as specified by the Architect.)

## INSPECTION AND PREPARATION

## 1-1.7 Inspection.

a. Examine surfaces to receive tile including inserts and accessories.

(1) All surfaces to be dry, clean, free of oily or waxy films, firm, level and plumb.

(2) Sub-floor surfaces will not be considered acceptable when the plane of the subfloor varies more than  $\frac{1}{2}$ " in 10 feet from the required elevation.

(3) Wall and ceiling surfaces will not be considered acceptable when the plane of the surface varies more than  $\frac{1}{4}$ " in 8 feet from the required plane.

Report to the Architect in writing all such defects. Do not proceed until satisfactory provisions have been made.

b. Do not start work until hangers, bucks, electrical and mechanical work which are to be in or behind tile has been installed.

c. Do not proceed until satisfactory protection of adjoining work has been provided.

d. Starting to work will imply acceptance of surfaces to receive tile within the limits established in this specification division.

## 1-1.8 Protection.

a. Close to traffic and other work, spaces in which tile is being set. Keep closed until tile is firmly set. Protect from damage until acceptance.

b. Temperature: Do not apply portland cement mortar to surfaces that contain frost. Do not install tile in areas where the temperature is below 50°F. If heating is necessary and is not provided for elsewhere in the specifications provide such service. The method of heating shall be fire

safe and approved by the Architect. Maintain temperature above freezing until mortar and grout have cured.

c. Humidity: Prevent rapid evaporation of moisture from the mortar bed. Installation under a canopy is recommended during dry, sunny weather for exterior applications. Do not lay the mortar setting bed too far in advance of actual setting of tile, and in no case set on a dry bed.

d. Do not walk or work on newly tiled floors without using kneeling boards.

e. Cure tile installations by keeping damp at least three days during which time all traffic is kept off.

#### WORKMANSHIP AND APPLICATION

##### 1-1.9 Preferred Order of Work.

a. 1st—base and walls; 2nd—ceilings; 3rd—floors.

(1 and 2 may be alternated on large area installations.)

##### 1-1.10 Mortar.

a. Mix mortar ingredients thoroughly before adding water.

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Standard Specification: A108.1-1958 Glazed Ceramic Wall Tile Installed in Portland Cement Mortars

#### 1-2 WALLS

(Including: base, wainscot, window stools, reveals and wall breaks. Applied over: smooth or rough concrete, masonry, or metal lath on wood or metal studs.)

(This part to be used together with 1-1.)

#### MATERIALS

##### 1-2.1 Mortars and Mixes.

a. Scratch coat mix. (This coat, including metal lath or concrete and masonry backing, is generally included in

Lathing and Plastering Division, except in a few sections of this country. If it is to be included in this division copy from "Requirements to be included in Related Divisions, Lathing and Plastering Division".)

b. Setting Bed Mix.

(Setting bed also called float coat.)

(1) Add accelerator certified by manufacturer to mix if quick setting of inserts and accessories is desired.

c. Dope coat or pure coat. (Also called skim coat, bond coat or neat cement coat.)

(1) Gray or white portland cement mixed with water to a creamy consistency. Rework from time to time but add no additional water or cement after initial mixing. Discard any unused material if initial set takes place.

1-2.2 Grout. (One or several of a or b or c or d may be included.)

a. Neat gray or white portland cement mixed with water to a creamy consistency.

(or)

b. Commercial waterproof grout that is certified by a responsible manufacturer as suitable for use with glazed ceramic tile for wall use and mixed in accordance with this manufacturer's directions.

(or)

c. Flexible grouts: (Under certain conditions where use is recommended by the grout manufacturer and with the approval of Architect these may be used, as follows: rubber latex type, organic grouts or other proprietary materials which are flexible or which make portland cement more flexible and enable it to cure under less humid conditions.)

(or)

d. Non-staining grouts: (On countertops, drainboards and other areas subject to excessive staining action, it may

be desirable to use certain proprietary epoxy or other resin type grouts which are non-staining, and resistant to acids and alkalies.)

#### WORKMANSHIP AND APPLICATION

1-2.3 Scratch Coat. (Scratch coat is not part of tilework unless herein specified.)

1-2.4 Cutting, Fitting, and Setting Accessories.

a. See 1-1.11a, b and c.

1-2.5 Application of Mortar Setting Bed and also leveling coat or plumb coat if specified as part of tile division and necessary to true walls.

a. Allow scratch coat or leveling coat to cure at least 24 hours before applying mortar setting bed.

b. Immediately prior to applying the mortar setting bed, saturate the preceding surface coat evenly but do not leave surface water.

c. Provide a plumb and true mortar surface the proper distance back from the finished wall line. Thickness of the mortar setting bed not more than  $\frac{3}{4}$ ".

d. Float the mortar setting bed over areas no greater than may be covered with tile while the setting bed remains plastic.

e. (If the one float coat method using mortar setting bed is approved this paragraph may be used instead of paragraphs a to d inclusive.) Dampproof the plaster, wall board, wood or masonry backing by means of a layer of polyethylene sheeting or waterproof felt, or by other damp-proofing treatment as recommended for this purpose by its manufacturer. A primer may be used on masonry walls in place of the waterproof membrane.

Nail metal lath securely through dampproofing to backing. Apply a thin mortar setting bed,  $\frac{1}{4}$ " to  $\frac{3}{4}$ " thick; set tile in this in the conventional way using a neat cement bond coat. Follow manufacturers' directions if proprietary admixtures are used in the mortar.

#### 1-2.6 Application of Glazed Wall Tile to Walls.

a. Soak tile at least  $\frac{1}{2}$  hour in clean water and drain off excess water. Each tile must be completely immersed during the soaking period. Remove tile from water and stack on edge sufficiently long to drain off excess water. Tiles that exhibit drying along edges shall be resoaked and drained. Allow no free moisture to remain on backs of tile when being set.

b. Trowel a skim coat of  $\frac{1}{32}$ " to  $\frac{1}{16}$ " thickness of neat portland cement paste over the still plastic setting bed and/or apply on the back of each tile. If white joints are required, white portland cement may be used for skim coat.

c. Tile shall be pressed firmly into the bed. Joint width shall be determined by the spacers on tile or by wetted strings in areas where string joints are used.

d. Cut through the setting bed horizontally and vertically every 4 courses of  $4\frac{1}{4}$ " tile (or) 17" to 24" in the case of other sizes.

e. Any tile out of line shall be adjusted at this time.

#### 1-2.7 Grouting.

a. If strings were used to space the tile remove before grouting but not until after the bond of the tile to the walls is complete.

b. Tile should be wetted if they have become dry before applying grout.

c. Force maximum of grout into joints by using any of the following methods: trowel, squeegee, brush or finger application.

d. Before grout sets, strike or tool the joints of cushion edge tile to depth of cushion, filling all gaps or skips and with square edge tile, fill joints flush with their surface. Do not permit dark cement to show through grouted white joints.

#### 1-2.8 Cleaning.

a. Sponge and wash tile thoroughly, diagonally across joints, finally polishing with clean dry cloths.

b. Do not use acid or acid cleaners to clean glazed wall tile.

#### 1-2.9 Curing.

a. If necessary provide dampness for curing.

#### 1-2.10 Expansion Joints.

a. Dry and clean expansion joints. Caulk full with caulking compound. Remove all excess compound and clean the surface.

\* \* \* \* \*

Standard Specification: A108.1-1958 Glazed Ceramic Wall  
Tile Installed in Portland Cement Mortars

### 2-2 WALLS (Continued)

#### WORKMANSHIP AND APPLICATION

2-2.3 Scratch Coat. (Scratch coat is not part of tilework unless herein specified.)

2-2.4 Inserts, Fixtures and Accessories.

a. See 1-1.11a, b and c.

### 2-2.5 Application of Mortar Setting Bed.

a. Allow scratch coat or leveling coat to cure at least 24 hours before applying setting bed.

b. Immediately prior to applying the mortar setting bed, saturate the preceding surface coat evenly but do not leave surface water.

c. Provide a plumb and true mortar surface the proper distance back from the finished wall line. Thickness of the mortar setting bed not more than  $\frac{3}{4}$ ".

d. Float the mortar setting bed over areas no greater than may be covered with tile while the setting bed remains plastic.

e. (If the one float coat method using mortar setting bed is approved this paragraph may be used instead of paragraphs a to d inclusive.) Dampproof the plaster, wall board, wood or masonry backing by means of a layer of polyethylene sheeting or waterproof felt, or by other damp-proofing treatment as recommended for this purpose by its manufacturer. A primer may be used on masonry walls in place of waterproof membrane.

Nail metal lath securely through dampproofing to backing. Apply a thin mortar setting bed,  $\frac{1}{4}$ " to  $\frac{3}{4}$ " thick; set tile in this in the conventional way, using a neat cement bond coat. Follow manufacturers' directions if proprietary admixtures are used in the mortar.

### 2-2.6 Application of Ceramic Mosaics to Walls.

a. Dampen absorptive tile by placing on a wetted cloth in a shallow pan prior to receiving skim coat. Allow no free moisture to remain on backs of tile when set.

b. Fill joints between tile mounted on sheets with the spacing mix.



c. Trowel a skim coat  $1/32''$  to  $1/16''$  thickness of neat portland cement paste over the still plastic setting bed and/or apply to the back of each sheet of tile. White portland cement may be used for skim coat to insure white joints.

d. Firmly press mounted sheets of ceramic mosaics into the bed and then beat to a true surface. Supporting board with a metal strip for spacing between sheets may be used.

e. Cut through the setting bed every 17" to 24" horizontally and vertically.

f. Within one hour after installing sheets, wet and remove paper and glue. Avoid use of excess water.

g. Adjust at this time any tile out of line.

#### 2-2.7 Grouting.

a. Force maximum grout into joints by using any of the following methods: trowel, squeegee, brush or finger application.

b. Before grout sets strike or tool the joints of cushion edge tile to the depth of cushion and fill all skips and gaps. Joints shall be completely filled flush with the surface of square edge tile.

#### 2-2.8 Cleaning.

a. Sponge and wash tile thoroughly and diagonally across joints. Finally polish with clean, dry cloths.

b. Acid cleaning (not recommended) shall not be done before 10 days after setting. Wet with water before cleaning with 10% muriatic acid solution. Take extreme care to protect all metal and enameled iron with grease. After acid cleaning flush thoroughly with clean water. Although most glazed tile resist all acids except hydrofluoric, a few special glazes may be attacked by muriatic. (Waxing is not recommended.)

### 2-2.9 Curing.

- a. If necessary, provide dampness for curing.

### 2-2.10 Expansion Joints.

- a. Dry and clean expansion joints. Caulk full with caulking compound. Remove all excess compound and clean the surface.

\* \* \* \* \*

### Standard Specification: A108.1-1958 Glazed Ceramic Wall Tile Installed in Portland Cement Mortars

3-1 General Requirements: The General Requirements of A108.3 are identical with the General Requirements of A108.1 pages 5 to 7 in this publication.

### 3-2 Walls

(Including: base wainscot, window stools, reveals and wall breaks. Applied over: smooth or rough concrete, masonry, or metal lath on wood or metal studs.)

(This part to be used together with 1-1.)

### MATERIALS

#### 3-2.1 Mortars and Mixes.

- a. Scratch coat mix. (This coat, including the metal lath, concrete or masonry backing, is generally included in Lathing and Plastering Division, except in a few sections of this country. If included, copy from "Lathing and Plastering Division".)

- b. Mortar setting bed. (Setting bed is also called float coat.)

\* \* \* \* \*

- (1) Add an accelerator certified by manufacturer to mix for quick setting of inserts and accessories.

\* \* \* \* \*

c. Dope coat or pure coat (also called skim coat, bond coat, and neat cement coat).

(1) Gray or white portland cement mixed with water to a creamy consistency. Rework from time to time but add no additional water or cement after initial mixing. Discard any unused material if initial set takes place.

d. Pointing and grouting mortar mix.

\* \* \* \* \*

(1) Add potable water to produce a stiff consistency so that pointing mortar may be forcibly tooled or compressed into joints.

#### WORKMANSHIP AND APPLICATION

3-2.2 Scratch Coat. (Scratch coat is not part of tilework unless herein specified.)

3-2.3 Inserts, Fixtures and Accessories.

a. See 1-1.11a, b and c.

3-2.4 Application of Setting Bed.

a. Allow scratch coat or leveling coat to cure at least 24 hours before applying setting bed.

b. Immediately prior to applying the mortar setting bed, saturate the preceding surface coat but do not leave surface water.

c. Provide a plumb and true surface the proper distance back from the finished wall line. Thickness of the mortar setting bed not more than  $\frac{3}{4}$ ".

d. Float the mortar setting bed over areas no greater than may be covered with tile while the setting bed remains plastic.

### 3-2.5 Application of Quarry Tile and Pavers to Walls.

a. Apply tile to setting bed while it is still plastic. Cut bed with edge of trowel every four courses vertically and horizontally.

b. Before positioning, apply to each tile a layer of neat cement paste  $1/32''$  to  $1/16''$  thick. Press on wall to completely fill with mortar the entire space between keys on back of tile. Neat cement may be applied as a skim coat to setting bed and then tile pressed and beat in place.

c. Stretch wetted rope spacers between horizontal rows of tile.

d. After tile is firmly set (about 48 hours after setting) carefully soak and remove rope.

\* \* \* \* \*

### Requirements to be Included in Related Divisions (Continued)

#### LATHING AND PLASTERING DIVISION (Continued)

### A-4.5 Scratch Coat Mix to be Applied to Lath, Concrete and Masonry.

\* \* \* \* \*

c. Apply scratch coat to metal lath or to properly cleaned masonry or concrete surface. Bushhammer or hack old or very smooth surfaces to a degree of roughness that provides adequate mechanical bond and/or properly dampen the surface and apply a dash coat of soupy consistency of one part portland cement to  $1\frac{1}{2}$  parts pointing mortar sand, allow to set thoroughly and wet properly just before application of the scratch coat.

d. Allow scratch coat to cure for at least 24 hours before applying leveling coat.

e. Wall or ceiling surfaces will not be considered acceptable when the plane varies more than  $\frac{1}{4}$ " in 8 feet from the required plane.

#### A-4.6 Leveling Coats.

Apply leveling coat over scratch coat when necessary to meet requirements of A-4.5e. or when a mortar thickness of more than  $\frac{3}{4}$ " is required to built out to finished tile surface. Scratch and cure leveling coat.

\* \* \* \* \*

**Plasterers' Exhibit No. 8**  
**AMERICAN STANDARD SPECIFICATIONS**  
 for  
**Installation of Ceramic Tile**  
 with  
**Dry-Set Portland Cement Mortar**  
 Including  
**American Standard Specification**  
 for  
**Dry-Set Portland Cement Mortar A118.1—1959**

**Sponsor**  
**Tile Council of America, Inc.**  
 Approved November 10, 1960  
**American Standards Association**  
**Incorporated**

• • • • •  
**Personnel of Sectional Committee on Specifications**  
**For Installation of Ceramic Tile**  
**ASA Project A108**

**Sponsor: Tile Council of America, Inc.**

• • • • •  
**Bricklayers, Masons & Plasterers International**  
**Union of America** **Shepherd, Robert E.**

• • • • •  
**Southern Tile Contractors Association** **Trimm, J. W.**  
**(Alternate) Montgomery, C.O.**

• • • • •  
**FOREWORD E**

**EXPLANATION AND NOTES**

The following explanation and notes are included as an aid  
 to the architect and specification writer and are not

to be copied or considered as part of these specifications.

#### E-1. Introduction

(a) **Standard Specifications:** These Standard Specifications for application of domestic ceramic tile with dry-set Portland cement mortar, Parts 5-1. to 5-5. inclusive, are for inclusion in the Tile Division of the Specifications either by copying them or by reference. Augment these with the special conditions, scope and materials as required by the specific job.

(b) **Interpretation and Selection:** The specifications which follow are of the short form or streamlined type; therefore add clauses governing their interpretation. Material in italics is explanatory and should not be copied. Bold face type indicates that a selection from several items may be made.

#### E-2. Requirements of Related Trades

(a) **General:** The quality of any ceramic tile installation is influenced by the stability, permanence and precision of installation of the backing or base material. For this reason make the material included in Appendix A of this specification a part of the appropriate section of the job specifications either by inclusion or reference therein.

(b) **Floor Drains:** When using floor drains, provide slope in subfloor by trades such as concrete or carpentry and not with the mortar setting bed.

(c) **Deflection:** Do not specify the tile applied over any floor areas with a deflection greater than  $1/360$  of the span. Allow for live load and impact as well as all dead load including weight of tile and setting bed.

(d) **Backing Materials:** (See 5-2.1.) A ceramic tile surface is not deteriorated in any way by exposure to moisture, but some backing materials are. Whenever an installation

of tile may become subject to frequent wetting the use of a backing material composed of Portland cement, which will not be deteriorated by exposure to moisture, is strongly recommended.

1. Wet Locations: (Wet locations are showers, tub shower recesses, or other locations subject to similar wetting conditions.) Portland cement plaster, concrete, concrete masonry, structural clay tile or brick are suitable.

2. Dry Locations: Any assembly noted in paragraph 1., or gypsum wallboard installed in accordance with American Standard Specifications for Gypsum Wallboard Finishes, A97.1-1958, except as modified in Appendix A-2.1. is suitable.

(3) Solid Backings: On all other solid backing surfaces for walls and ceilings first apply a waterproof membrane, metal lath, and a Portland cement scratch and brown coat, or on walls in dry locations cover surfaces with properly installed and treated gypsum wallboard.

4. Wood Subfloors: Apply waterproof membrane and a reinforced Portland cement mortar setting bed  $\frac{3}{4}$  to  $1\frac{1}{4}$  inch thick over wood floors that are to receive tile.

(e) Preliminary Preparations: Correction or leveling of backings to receive tile is generally unnecessary on new work where related trades perform their work properly. In private residences and on remodeling work the tile trade traditionally performs this preparation work.

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#### 5-1.2. Dry-Set Mortar Ingredients

(a) Dry-Set Mortar—To comply with requirements of American Standard Specification for Dry-Set Portland Cement Mortar, A11.1-1959. (see page 15).

(b) Water—potable.

(c) Sand—clean and graded, free of dust, silica flour and other deleterious materials. Sand passing a 16 mesh



screen is acceptable except for 1/16 inch mortar beds on smooth surfaces where sand passing a 30 mesh screen is to be used.

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## 5-2. General Requirements

### For Inspection, Preparation and Protection

#### 5-2.1. Inspection

(a) Examine surfaces to receive tile, including inserts and accessories.

1. All surfaces to be dry, clean, free of oily or waxy films, firm, level and plumb.

2. Sub-floor surfaces which vary more than 1/4 inch in 10 feet from the required elevation are not acceptable.

3. Plane of wall and ceiling surfaces to be plumb, level and true with square corners. Variations of more than 1/4 inch in 8 feet are not acceptable.

Report to the architect in writing, all such defects. Do not proceed until satisfactory corrections have been made.

(b) Do not start work until grounds, anchors, plugs, hangers, bucks, electrical and mechanical work in or behind tile has been installed.

(c) Do not proceed until adjoining work is satisfactorily protected.

(d) Do not set tile on gypsum wallboard unless installed and prepared in accordance with American Standard A97.1-1958 and Appendix A-2.1.

(e) Starting of work implies acceptance of surface to receive tile.

#### 5-2.2. Preparation of Backing Surfaces

(a) Walls:

1. When required, level, plumb or spot patch wainscot, wall and ceiling surfaces on which no plastering is specified.

2. (Delete when not applicable.) When Portland cement plaster backing is required for tile work in private residences with three bath rooms, vestibules and small halls or less, apply Portland cement scratch and brown coats in accordance with American Standard A42.3—1946.

(b) Floors: Apply cleavage membrane and a reinforced Portland cement mortar bed  $\frac{3}{4}$  to  $1\frac{1}{4}$  inch thick over wood subfloors that are to receive tile. Provide a reinforced Portland cement mortar bed  $\frac{3}{4}$  to  $1\frac{1}{4}$  inch thick for all floors having waterproof membranes or pans.

(c) Leveling of floors: (If tile trade is to level floor surfaces other than those included in (b) above, describe in this section.)

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### 5-3. General Requirements For Workmanship and Application

#### 5-3.1. Preferred Order of Work

(a) 1st-base and walls; 2nd-ceilings; 3rd-floors. (One and two may be alternated on large area installations.)

#### 5-3.2. Cutting, Fitting and Setting Accessories

(a) Cut and drill tile for proper fitting around all equipment in place without damaging tile. Rub down with abrasive stone all exposed sharp edges of cuts. Grind and fit carefully at intersections, again trim finish, built-in fixtures and accessories. Fit tile closely around outlets, pipes, fixtures and fittings, so that plates, escutcheons and collars will overlap cuts.

(b) Evenly space and center accessories in tile work with joints level, plumb and true, and to correct projection.

(c) Anchor all accessories securely in accordance with their manufacturers' directions.

### 5-3.3. Dry-Set Mortar

#### (a) General

Unless mortar manufacturer's instructions differ, use dry-set mortars in accordance with the following directions.

#### (b) Mixing neat dry-set mortar

1. Add dry ingredients to water. Mix thoroughly and let mortar stand for 15 minutes; then remix. Do not add water, additional mortar, or other ingredients after slaking period.

2. When using a dry-set mortar concentrate, add recommended amount of Portland cement and mix thoroughly before adding to water.

3. The proper mortar consistency is such that when applied with the recommended notched trowel to the backing, the ridges formed in the mortar will not flow or slump.

#### (c) Mixing sanded Mortar

1. Sand to be fine, clean material. (See 5-1.2.(c).)

2. Mix dry ingredients thoroughly before adding to water. Then mix thoroughly and let stand for 15 minutes. Remix but do not add water or additional materials.

3. The proper mortar consistency is such that when applied with the recommended notched trowel to the backing, the ridges formed in the mortar will not flow or slump.

4. Add screened sand to the mortar in accordance with manufacturers' recommendations to meet requirements for different bed thicknesses or for different types of tile. Note: Many manufacturers require 1 to 2 part sand to 1 part mortar for all vitreous and impervious tile.

#### (d) Applying mortar

1. Float mortar over backing, using flat side of trowel. Cover surface evenly with no bare spots. Strike with notched trowel recommended by mortar manufacturer just before setting tile.

2. Apply mortar to permit setting of tile before skinning or initial set takes place. Press and beat tile into place to obtain at least 40 per cent coverage by mortar on the back of tile or tile assemblies.

3. Do not use mortar after initial set. During use remix mortar occasionally but never add water or fresh materials.

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#### 5-4. Workmanship and Applications For Walls and Ceilings

(Including: base, wainscots, window stools, reveals, soffits, and wall-breaks)

##### 5-4.1. Application of Mortar

(a) Mortar bed to be minimum of 1/16 inch.

(b) Do not wet backing surfaces prior to applying dry-set mortar. Dampen dry backings if desired.

(c) Float mortar over area no greater than can be covered with tile while mortar remains plastic. Cover evenly with no bar spots. Comb mortar with notched trowel within 10 minutes of applying tile.

(d) Provide a plumb and true mortar surface, the correct distance back from the finished wall line.

(e) Follow manufacturer's directions in adding sand to dry-set mortar. It is essential to add sand to some brands of dry-set mortar to obtain a satisfactory bond with vitreous and impervious tile. Some manufacturers also permit the addition of sand to increase coverage.

##### 5-4.2. Setting Glazed Wall Tile (semi-vitreous and non-vitreous)

(a) Soaking tile is not necessary. If soaked tile are used, remove all surface water. (In some cases it may be desirable to soak non-vitreous tile and grout with conventional Portland cement grout).

(b) Press tile firmly into fresh mortar. Tap and beat to a true surface.

(c) Determine joint width by the spacers on tile or by strings or pegs if tile without spacers are used.

(d) Press and beat tile into place so that at least 40 per cent of the back of each tile or tile assembly is covered with mortar.

(e) Adjust tile before initial set takes place.

#### 5-4.3. Setting Ceramic Mosaics

(a) Always refer to manufacturer's directions and add sand if required.

(b) Press sheets of tile firmly into mortar. Align sheets promptly and beat to a true surface. A supporting board with a metal strip for spacing between ceramic mosaic sheets may be used.

(c) Press and beat tile into place so that at least 40 per cent of the back of each tile or tile assembly is covered with mortar. On exteriors, complete contact between tile and mortar is required.

(d) If face mounted tile sheets are used, wet and remove paper and glue before initial set takes place. Avoid use of excess water, Adjust any tile out of line at this time.

#### 5-4.4. Setting Quarry Tile, Pavers and Other Unmounted Vitreous and Impervious Tile.

(a) Always refer to manufacturer's directions and add sand if required.

(b) Press tile firmly into position so that at least 40 per cent of the back of each tile is covered with mortar. On exteriors, complete contact between tile and mortar is required.

(c) Use wet rope between horizontal rows of tile as spacers.

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## APPENDIX A

## Requirements To Be Included In Related Trades

The material in this Appendix is not part of this Standard, but is suggested to the architect for inclusion in the appropriate sections of job specifications.

\* \* \* \* \*

### A-3. Lathing and Plastering Trades (Applicable to walls and ceilings only)

#### A-3.1. Portland Cement Plaster Backing

(a) All work to be in accordance with American Standard Specifications for Portland Cement Plastering, A42.3-1946.

(b) Scratch coat (first coat on metal lath) and brown coat (second coat on metal lath and first coat on masonry) behind all tile work. (Unless otherwise specified or detailed.)

(c) Brown coat to be plumb with square corners. Rod finish but do not scratch. Tolerance of plane surfaces not to exceed  $\frac{1}{4}$  inch in 8 feet. Use mortar or plumb screeds to insure these requirements.

(d) Where walls above the wainscot are plastered, continue the finished surface 1 inch below top of tile wainscot line unless otherwise detailed.

(e) Where tile to finish flush with plaster, apply brown coat behind tile of correct thickness to allow for tile and setting bed, so that tile and plaster finish will be flush.

1. If tile applied before plaster finish: Cut a V-joint or shallow line of demarcation in plaster at juncture of tile and plaster. (Optional with square edge tile.)

\* \* \* \* \*

#### A-3.2 Screeds

(a) Locate at floor, ceiling, top of wainscot and out-corners to insure plumb backing.

(b) Corners plumb and square.

**Plasterers' Exhibit No. 9**  
**GENERAL CONTRACT**  
**SPECIFICATIONS**

**Job—No. 1292**  
**Additions To The**  
**M. D. ANDERSON**  
**LIBRARY**

**University of Houston**

**Houston, Texas**

**January 27, 1965**

**DIVISION NO. 14**  
**Furring, Lathing And Plastering**

**14-6 Workmanship**

(a) All work shall be executed by skilled workmen in such a manner as to fulfill the requirements of the Drawings and these Specifications.

**14-11 Temperature and Ventilation (ASA)**

(a) In cold weather, a uniform temperature of not less than 55°F and not more than 80°F shall be continuously maintained in the building for a week before the application of plaster, continuing during plastering operations and after the plaster is dry. The heat shall be well distributed in all areas, and deflective or protective screens shall be used to prevent concentrated or uneven heat on plaster areas near the heat source. Where required, heat shall be furnished by the General Contractor.

**14-19 Guarantee**

(a) This Contractor shall, as a part of his Contract, furnish a written guarantee warranting all work executed

under this Division against popping, checking, discoloring, falling off or becoming otherwise defective for a period of one (1) year from and after completion and acceptance of the work as evidenced by date of final payment and binding himself to repair or replace, without additional compensation beyond the contract amount, any defect which may develop within that period, when ordered to do so by either Owner or Architect.

## DIVISION NO. 15

### Precast Terrazzo & Tile Work And Marble Work

#### 15-1 General Conditions

(a) The current edition of "The General Conditions of the Contract" as published by The American Institute of Architects together with the Supplemental General Conditions, Pages 1-1 to 1-16 as specified under Division 1 of these Specifications, shall be considered as a part of this Division of the Specification, insofar as they may be termed applicable, whether attached hereto or not.

(b) Should the General Contractor desire to sublet the work included under this Division of the Specifications and also include in this Subcontract additional items of work that are specified under other Divisions of the Specifications, it shall be the responsibility of the General Contractor to adequately designate these additional items of work to the Sub-Bidders at the time that he requests proposals from them.

#### 15-2 Scope

(a) The work under this Division of the Specifications shall include all labor, materials, equipment and appurtenant accessories necessary for, or incidental to, the completion of all ceramic tile work as indicated or reasonably implied by the Drawings and as specified herein. Precast terrazzo and marble work shall also be included in this Division.



## 15-3 Samples

(a) Contractor must furnish samples for the Architect's approval before purchasing any material.

## 15-4 Preparatory Work

(a) This Contractor shall, as a part of this Contract, examine all preparatory work and report to the Architect or General Contractor any defects or imperfections which, in his opinion, would prevent the satisfactory completion or permanency of his work. Failure to make such an inspection and report will be construed as an acceptance of preparatory work and later defects will not relieve this Contractor of his responsibility under the Guarantee.

## 15-5 Materials

(a) Floor tile shall be 1-9/16" x 1-9/16" unglazed ceramic floor tile in colors selected by the Architect.

(b) Toilet wall tile to be 4 1/4" x 4 1/4" dull mat square edge Hermosa with cove base. Salient angles to be bull-nosed, interior angles coved.

(c) Setting bed shall be composed of mortar made from one (1) part Portland cement and three (3) parts sand with two (2) pounds of Master Builder's "Stearox 100" added to each sack of cement in accordance with the directions of the manufacturer.

(d) Tile for stairs to be 6" x 6" x 1/2" Quarry tile as manufactured by the Carlyle Tile Company.

(e) Tile for window stools to be the same as above except one edge (nosing) of tiles to be finished and have small Chamfer on bottom corner as shown on the Contract Drawings.

## 15-6 Laying Tile

(a) The mortar shall be spread until the surface of the mortar setting bed is in true even planes. Set temporary

screed clips as guides to assure these results. Only as large an area as can be covered with tile before the mortar has reached its initial set shall be placed in one operation.

(b) All tiles must be firmly secured in place, joints must be well filled, and lines must be kept straight and true, and all finish surfaces brought to true level planes. The completed work must be free from chipped edges.

(c) As soon as mortar setting bed has sufficiently hardened, floor tile shall be grouted with Portland Cement colored to match tile. The grout must be forced into the joints. Sprinkle with dry cement and finish flush and true. All surplus grouting shall be removed and the face of the tile left clean.

(d) Upon completion of the work, the tile Contractor shall remove all unused materials, rubbish, etc., in connection with his contract and shall give the tile a thorough cleaning.

#### 15-11 Guarantee

(a) The undertaking of this Subcontract constitutes the issuance of a guarantee to replace any defective workmanship or material that may occur during a period of one (1) year from date of final payment.

**Plasterers' Exhibit No. 10****A GUIDE TO THE BEST****TILEWORK****AND MEMBERSHIP LIST****TILE CONTRACTORS ASSOCIATION OF AMERICA****Reprinted from the 1965 Sweet's Catalog**

\* \* \* \* \*

**DRY-SET MORTAR INSTALLATION**

After decades of use by tilesetters in its original form, something new has been added to portland cement to create "Dry-Set" mortars that have even better characteristics for installing ceramic tile.

The additives are organic chemicals discovered to be effective at the Tile Council of America Research Center near Princeton, N.J. A 3/32-inch thick layer of Dry-Set mortar has twice the bonding strength of one-inch thick conventional mortar bed.

In addition, Dry-Set mortar eliminates soaking of glazed tile. With conventional mortar, glazed tile must be soaked in water to prevent it from absorbing moisture from the mortar and preventing proper cure.

Dry-Set is ideal for installing tile over concrete, cinder block, brick, haydite and existing ceramic tile. It is not recommended for setting ceramic tile over masonite, plywood, metal and gypsum plaster.

As with conventional mortar, Dry-Set can be used to level minor irregularities in backing materials.

\* \* \* \* \*

**Plasterers' Exhibit No. 11****L & M****SURCO THIN-SET SYSTEMS****SURFACE COATINGS**

\* \* \* \* \*

**SPECIFICATIONS: CONVENTIONAL INSTALLATIONS**

**Tilework:** Thin-set Portland cement mortar system for wainscot, walls, ceilings and floors—Interior and Exterior.

**Scope:** This Contractor to be responsible for all work called for in this section and shall furnish all labor, materials and equipment necessary to complete such work to the satisfaction of the Architect.

**I. MATERIAL:**

**A. Tile:** To comply with U. S. Department of Commerce and National Bureau of Standards S.P.R.-R61 and Federal Specification SS-T-308b. All Tile to be graded and containers grade sealed (Grade seals are not used on Quarry Tile containers but containers of Second Grade Quarry Tile are stamped with the word "Second"). Master Grade Certificate to be issued, if requested, before shipment is made. Name of Architect, Owner, Contractor, Job Location, Grade, Type and Quality of Material to be shown on Master Grade Certificate.

(Specify: Type, size, mounting, thickness, color, pattern, modular and special purpose requirements.)

**B. Setting Bed:**

**1. Wainscot, Walls or Ceilings:** To be installed over (specify backing surfaces such as—Portland cement plaster, concrete block, brick or other masonry backings). Refer to A.S.A. 108-1 for sand/cement proportions for backing surfaces.

2. Floors: To be installed over concrete underbed furnished by others. Concrete to have rod (broom or sand) finish. Method of installation: Shall be Portland Cement Thin-Set Mortars in strict accordance with the specifications set forth in A.S.A. 108.5-1960. Setting bed material shall be the standard product of a reputable manufacturer regularly engaged in the commercial production of Thin-Set materials, such as those manufactured by L & M-SURCO Mfg., Inc. Products furnished shall bear the quality triangle of the Tile Council of America, Inc. and conform to A.S.A.-A118.1-1959, and must meet or surpass the performance standards as set forth by the Tile Council Research Center.

C. Grout: A commercially prepared grouting material, such as L & M Grout, designed by the manufacturer for the intended use. (Refer to Product Selection Chart for proper L & M Grout selection.)

Note: Specify joint width and grout color for Quarries or Pavers.

## II. PREPARATION :

A. Wainscot, Walls or Ceilings: Backing surface to receive setting bed, called for in another part of the Specifications, to be done by others and shall be straight, plumb and true to a tolerance in plane not to exceed 3/16" in 8' 0" before commencement of Tilework. All surfaces shall be free of dust, deleterious film and all incompatible matter. The Tile Contractor to report any defective backing surface or material to the Architect before starting Tilework. Priming of all gypsum, water susceptible backing surfaces to be done by this Contractor with L & M Primer-Sealer. Priming to be done in accordance with L & M printed instructions.

Note: If work jurisdictional assignment requires that the priming be done by other trades, it must be satisfactory to this Contractor.

B. Floors: (Where Drainage pattern is required, pitch sub-floor uniformly to drains to provide complete drainage.) Concrete underbed to be furnished by others and shall be level and true to a tolerance in plane not to exceed  $\frac{1}{4}$ " in 10' 0" before commencement of Tilework. All surfaces shall be free of dust, deleterious film and all incompatible matter. The Tile Contractor to report any defective underbed to the Architect before starting Tilework.

### III. INSTALLATION:

A. Setting Bed to Receive Tile: Mortar to be mixed thoroughly and applied in strict accordance with manufacturer's recommendations. Minimum thickness of setting bed to be  $\frac{3}{32}$ " to  $\frac{1}{8}$ " (maximum— $\frac{3}{16}$ "). A factory integrated mortar, such as L & M Wall Mix, incorporating a graded sand, may be used for absorptive body Glazed Wall Tile. Floor Mix, incorporating a graded sand, must be used when Ceramic-Mosaics, Glass Mosaics, Quarry Tile, Pavers or other low absorptive materials are used.

B. Tile Laying: Tile to be installed with the best practice of the Trade and in accordance with the procedures as set forth in current L & M Product Information Sheets. Wall Tile may be stacked or buttered at the option of the Tile Layer. Wood block shall be used to tamp (beat) Tile to develop a positive bond and obtain a smooth surface. Joint width to be determined by spacers on Tile, string or special mounting. In the use of back-mounted sheets, each Tile panel, or assembly, must have at least 75% coverage by mortar on back, when removed for inspection. Setting bed to be of such thickness that flow of mortar to joints shall cover at least 50% of the perimeter of each Ceramic Mosaic Tile. All panels (sheets) to be aligned properly and brought to a true surface.

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## Plasterers' Exhibit No. 12

## ARCHITECTURAL MANUAL

## L &amp; M SYSTEM

## For the Installation of Real Clay Tile

## THE POSITIVE METHOD FOR INSTALLING

\* Note: With the economy afforded by L & M we do not propose to meet the standard in appearance of a  $\frac{3}{8}$ " concrete final setting bed, installed by the Tile Layer, which we feel is the optimum in obtaining a smooth, plumb and plane surface. However, from our experience with the Tile Contractor we can offer a most acceptable installation when L & M is properly used, and satisfactory backing materials and workmanship are afforded by other trades.

## TYPE MATERIAL—USE

1. L & M Mortar Mix (Pre-mix, Sand-Mix or Concentrate): An inorganic Portland cement Thin-set Mortar, either premixed with White or Natural Portland cement, or Concentrate to be used with White or Natural Portland cement (ASTM C—150, Type 1), for installing Dry Tile of all types, either glazed or unglazed. No sealing or priming of backing material required, except for water-susceptible backing materials. Clean water used for both mixing and cleaning. Sand up to two parts must be added for out-of-level surfaces, for floor work and for installing ceramic and glass mosaics. L & M Sand-mix is Pre-mix, integrated with  $1\frac{1}{2}$  parts sand, an all purpose material for all uses. Application by  $\frac{1}{4}$ " notched trowel, spaced no greater than  $\frac{1}{4}$ " apart. This product manufactured under license to the Tile Council of America, Inc. and all containers bear their Quality Triangle.

## SPECIFICATIONS

**TILEWORK:** Portland Cement Thin-set Method for Wainscot, Walls, Ceilings, and Floors—Interior and Exterior.

**Scope:** This Contractor to be responsible for all work called for in this section and shall furnish all labor, materials and equipment necessary to complete such work to the satisfaction of the Architect.

**I. MATERIAL:****A. Setting Bed:**

1. Wainscot, Walls or Ceilings: To be installed over (specify backing surfaces, such as—Portland cement plaster, concrete block, brick or other masonry backings) or as called for in the finish schedule.

2. Floors: To be installed over concrete underbed furnished by others. Concrete to have (steel float), (broom or sand) finish, or as scheduled.

**Method of installation:** Shall be Portland cement Thin-set Bed in strict accordance with manufacturer's recommendations. Setting bed material shall be the standard product of a reputable manufacturer regularly engaged in the commercial production of such products. Products furnished shall bear the Quality Triangle of the Tile Council of America, Inc., and shall meet or surpass the performance standards as set forth by the Tile Council Research Center, such as those manufactured by L & M Tile Products, Inc., or equal. Further, the Dry-set Portland Cement Mortar must meet the existing Standard Method of the American Association, A118.1-1959.

**B. Grout:**

(When conventional jointing material or specially formulated grouts, such as L & M Dry Cure Grout, are used, Specify—white or natural) (Refer, product description.)



C. Tile: To comply with U. S. Department of Commerce and National Bureau of Standards S.P.R.-R61 and Federal Specification SS—T—308b. All Tile to be graded and containers grade sealed (Grade seals are not used on Quarry Tile containers but containers of Second Grade Quarry Tile are stamped with the word "Second"). Master Grade Certificate to be issued, if requested, before shipment is made. Name of Architect, Owner, Contractor, Job Location, Grade, Type and Quality of Material to be shown on covering order.

(Specify: Type, size, mounting, thickness, color, pattern, modular and special purpose requirements.)

## II. PREPARATION:

A. Wainscot, Walls or Ceilings: Backing materials for Tilework, called for in another part of the Specifications, to be done by others and shall be straight, plumb and true before commencement of Tilework. All surfaces shall be free of dust, deleterious film and all non-compatible matter. The Tile Contractor to report any defective surfaced backing material, to the Architect, before starting Tilework. Priming of all water susceptible backing materials, or surfaces to be primed, as recommended by the Thin-set Manufacturer to be done with a product such as L & M Polycrete, or equal, by this Contractor unless reference to this work is called for under another classification.

B. Floors: Concrete underbed (to receive Thin-set and Tile) to be furnished by others and shall be level and true before commencement of Tilework. (Pitch sub-floor to drains with uniform slope). All surfaces shall be free of dust, deleterious film and all non-compatible matter. The Tile Contractor to report any defective underbed, to the Architect, before starting Tilework.

## III. INSTALLATION:

A. Setting Bed to Receive Tile: Portland cement thin-set mortar to be mixed thoroughly and applied in strict

accordance with manufacturer's recommendations. Minimum thickness of setting bed to be  $3/32''$  to  $1/8''$ . Screened sand may be used for any type Tile or any setting bed thickness but must be added to mortar when ceramic mosaics, quarry, pavers, etc., are used.

**B. Tile Laying:** Tile to be installed with the best practice of the Trade and in accordance with the procedures as set forth in the Installation Manual, Current Edition, as published by L & M Tile Products, Inc. Wall Tile may be stacked or buttered at the option of the Tile Layer. Wood block may be used to tamp (beat) Tile to obtain a smooth surface. Joint width to be determined by spacers on Tile, string or special mounting. In the use of back-mounted sheets, each Tile panel, or assembly, must have at least 75% coverage by mortar on back, when removed for inspection. Setting bed to be of such thickness that flow of mortar to joints shall cover at least 50% of the perimeter of each ceramic mosaic Tile. All panels (sheets) to be aligned properly and beat to a true surface.

**C. Grouting:**

1. Force grout into joints, avoiding air traps or voids; strike or tool joints of cushion edge. Title to depth of cushion. Joints to be held flush with square edge Tile.

2. Using diagonal strokes, across joints, remove all excess grout. Check for gaps or air holes, filling same. Do not use acid in final cleaning but clean water in initial cleaning. Remove surface latence with dry polishing cloth (burlap or non-staining sawdust may be used on floors).

3. Follow manufacturer's recommendations if commercial grout similar to L & M Dry Cure Grout is used. For spray, intermittently, for a period of three days for a hard, dense joint with either conventional or commercial grout, on exterior installations.

#### IV. PROTECTION:

A. It will be the responsibility of this Contractor to protect Tilework during the period of installation. After acceptance of this portion of the work, by the Architect, the General Contractor must assume responsibility of defending the Tilework. No traffic to be allowed on Tile floors for at least 48 hours after installation.

\* Special Note: For exterior installations (Specify—proper expansion joints under Section II. Caulking on all perimeters of Tilework and/or abutments to other materials under Section III-B).

\*\* See Related Craft Specifications—Page 8.

#### RELATED SPECIFICATIONS OF OTHER TRADES AND SUGGESTED INSERT SPECIFICATIONS

##### A. Work Not Included in Tile Work

##### 1. Lathing & Plastering

(a) Under Lathing: (Metal Lath) This contractor to furnish and install metal lath, in type and weight as shown, behind all tile work, where required. This contractor responsible for a satisfactory metal lath installation to receive necessary plaster coats furnished by plasterer.

(b) Under Plastering: (Portland Cement or Plaster Scratch & Brown Coat) (Refer to Page 14) This contractor to furnish and install, and be responsible for, scratch & brown coat behind all tile work, where required. Mortar or plumb screens shall be used to insure a plumb, square-cornered and plane surfaced brown coat. Brown coat to be wood float or rod finish and flush with finished wall. Tolerance in surface plane to be a plus or minus of 1/8".

##### 2. Masonry

(a) Under Masonry: (Layed up Backing for Tile Work) (Refer to Page 15). This contractor responsible for a

smooth, plumb and straight wall on area to receive tile work. Joints to be covered may remain flush. Tolerance in surface plane to be a plus or minus of 1/8".

### 3. Carpentry

(a) Under Finish Carpentry: (Dry Wall Construction) This contractor to furnish and install, and be responsible for, backing material to receive tile work. Wood studs shall be plumb and straight in line and corners square. Headers to be provided at top of Tile wainscot and all recessed units framed.

Note: It is not the intention of L. & M. to impose a hardship on any other craft, however, we do need the full cooperation of all Contractors represented in the work performed where Tile occurs. Placing the responsibility upon each craft by clear requirements in the specifications will prevent "on the job" difficulties between various contractors, hence the suggested insert specifications shown above.

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SUGGESTED SPECIFICATION  
in the use of the  
L & M THIN-SET METHOD FOR INSTALLING  
CONDUCTIVE FLOORS

#### A. MATERIAL:

1. Tile: To be a Conductive Tile of Standard Grade to comply with National Fire Protection Association standards. The Tile manufacturer will furnish a Certificate of Compliance to NFPA requirements and a Master Grade Certificate in compliance with U. S. Department of Commerce and National Bureau of Standards R61-44 and Federal Specifications SS—T—308, upon request, before shipment is made. Name of Architect, Owner and Job Location to be shown on covering order.

(Specify: Manufacturer, type, size, mounting, pattern and color).

## 2. Setting Bed:

(a) Preparation: Masonry backing surfaces to receive Tile and thin-setting bed material, to be done by others and shall be straight, level and true. This backing surface shall provide a mechanical bond. The Tile Contractor to report any defective surfaced backing material, to the Architect, before starting Tilework.

Priming of backing surfaces, where required, as recommended by the thin-set manufacturer, to be done with L & M Polycrrete Seal and Bond Coat, by this Contractor.

(b) Thin-Set Mortar: Will be fully integrated conductive type inorganic Portland Cement thin-set bed material. This thin-set mortar will be the standard product as manufactured by L & M Tile Products, Inc., known as L & M Conductive Mortar. The Manufacturer will furnish a Certificate of Compliance with N F P A Bulletin Number 56, upon request.

(c) Grout: Portland Cement, waterproof type; and fine screened, sharp, clean sand. Sand must pass a # 60 mesh screen.

## B. Installation:

1. Setting Bed To Receive Tile: Fully integrated Conductive thin-set mortar to be mechanically mixed thoroughly and applied in strict accordance with the manufacturer's recommendations. Mixing period shall be between one minute minimum and two minutes maximum. Minimum thickness of setting bed to be 3/32" to 1/8". Conductive mortar which has become damp or air slaked will not be used.

2. Tile Laying: Tile to be installed in accordance with the best practice of the Trade and in strict accordance with the procedures as set forth by L & M Tile Products, Inc. Setting bed to be of such thickness that flow of mortar to joint will cover not less than 50% of the perimeter of each tile. Beat to a true surface and remove face mounting material, using a minimum of water.

## Plasterers' Exhibit No. 14

INSTALLATION MANUAL OF THE L & M  
SYSTEMFor the Installation of *REAL* Clay Tile

USING

## L &amp; M MORTAR MIX

Tile Council of America Formulas 457, 756 &amp; 759 Exceed

ASA 118.1—1959—American Standard for Dry-Set  
Portland Cement Mortars

and

## L &amp; M Grouts

\* \* \* \* \*  
STEP 2—A. MIXING L & M MORTAR MIX Concentrate

Mix L & M Mortar Concentrate with Portland Cement Type 1, (either natural or white). One unit of Mortar Mix to one sack of Portland Cement. One unit of L & M Mortar Mix is composed of two 12½ pound bags, when in cartons. Grey Concentrate is also furnished in 25 pound multi-wall bags. This requirement of 25 pounds of Concentrate to 94 pounds of Portland Cement must be adhered to. When smaller batches are required use four (4) parts of cement to one (1) part L & M Mortar Mix. In ratio, 12½ pounds of Concentrate will mix one-half bag of Portland Cement.

Although not a requirement we recommend equal parts of fine screen sand to the cement used, or one sack (100 lbs.) to one sack of Portland Cement (94 lbs.) for all Tile installations. Greater workability, better key & bond and economy are advantages gained. A neat coat is not required when sand is added. Plasterer's sand, silica or ottawa is acceptable. Always use sand (up to two (2) parts) with ceramics or mosaics. Machine mixing (not mandatory) furnishes a smoother, more economical and faster mix.

\* \* \*

### STEP 3. APPLYING L & M MORTAR MIX:

First apply a skim coat, pressed well into backing material, removing all excess, then follow with a heavier coat of about  $3/16$ " thickness (no time lapse between coats). Comb the setting bed coat with a notched trowel of at least  $1/4$ " notches spaced no greater than  $1/4$ " apart. When Tile is beat into heavy notched material, the setting bed will then be a full  $3/32$ " to  $1/8$ " thickness. Where walls are prepared for L & M no float strips nor plumb screens are required. As previously mentioned, sand in up to two (2) parts to Mortar Mix may be used for levelling or straightening of surfaces. A plane surface is obtained by the use of straight edges or darbying. Always run a small panel to determine the setting time as heat, humidity, porosity and absorption are all factors in determining the workability of any cement product, and applies to L & M Mortar Mix. Soaking of Tile and back-up wall is not the answer to greater working time with Mortar Mix as this introduces more water and actually reduces working time on large areas.

### STEP 4. APPLYING TILE TO FLOAT COAT:

L & M does not intend to establish procedure of application of the Tile to the wall and make these recommendations from past experiences of other Tile Layers. Apply Tile DRY. (Wet Tile is permissible.)

(a) Buttering Method: Unless backing material has been previously primed, always run a neat skim coat of L & M Mortar Mix on wall before buttering Tile. Proper buttering calls for the mix on all four edges of the Tile to eliminate voids generally found when a ball of material is placed on back of Tile. Use of a wood block in beating wall to a smooth plane is not recommended where Tile is buttered. If sand is used, in proportions previously mentioned, it is not necessary to use neat mix on back of Tile prior to buttering with sand mortar.

(b) Stack and Beat Method: A skim coat, prior to the notched trowel or free hand setting coat, is essential to insure greater working time on the wall. Spreading small

areas and covering quickly with Tile will insure positive key. Follow with beating-in of wall soon after Tile has been installed and DO NOT beat or vibrate wall after initial set has taken place. After blocking an area of Tile do not repeat blocking, after a time lapse, as with conventional mortar this might induce loosening of Tile. Should spread mortar film over, break film by striking lightly with a damp wet brush or whisk broom and apply a neat skim of Mortar Mix to the back of the Tile. Apply float coat to small areas to avoid filming.

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**Plasterers' Exhibit No. 15**

**HIGHLIGHTS OF TILE TECHNICAL PROGRESS**

Tile Council of America, Inc.

\* \* \*

*Scientific Principles*

Dry-set mortars having dry-curing properties consist essentially of portland cement, along with relatively small amounts of additives that impart a high viscosity to the water used in mixing.

Hardening of the mortar does not occur as a result of evaporation of the water, but rather the result of a chemical reaction between the water and the constituents of the cement. The so-called "dry-setting" properties of these mortars are due to the fact that the viscosity of the water is sufficiently high so that water is not lost to a porous backing, or to dry tile, before the cement has had a chance to react with this water.

It was easily determined that a suitable portland cement additive should not only provide water retentivity, but must do this without accompanying detrimental effects, such as retarding the set or cure.

Suitable additives were found, and these form the basis for dry-set portland cement mortars patented by the Tile Council and licensed for manufacture to a number of firms authorized to imprint the Tile Council "seal of quality" on these products.



It should be noted that, although dry-set is relatively water-retentive, it actually does lose water, but at a *very slow and controlled rate*. This controlled loss of excess water, such as to absorptive cinder block or gypsum wallboard, is important for proper curing of the tile bed.

#### Advantages of Dry-Set

The many advantages of dry-set mortar are, of course, the reason for its phenomenal success.

Topping the long list are speed, economy and light-weight installation. The tile-setter is freed from the usual chores of soaking tile, saturating block walls, and maintaining damp conditions, and can devote more of his skill to achieving quality workmanship.

An advantage of dry-set mortar over organic adhesive is that it can be leveled in thickness of from  $3/32''$  to  $1/4''$  over concrete masonry blockwalls to produce a plumb, true surface notwithstanding irregularities in the block or variations in the thickness of the tile.

Other advantages include the elimination of inflammable or objectionable solvents. And, of course, there is the achievement of satisfying craftsmen who prefer materials with the familiar working properties of conventional portland cement mortars.

#### *Still More Advantages*

Dry-set can be used to install tile in layers as thin as  $3/32''$ , providing great savings in weight and material over conventional mortar methods. And, average bond strength of dry-set, tested over various backings, is more than 300 lbs. per square inch. This high value permits the users of TCA-licensed mortars to add sand for thicker bed requirements needed for leveling purposes without danger of ending up with inadequate bond strength.

Also, dry-set can be used in just one coat, instead of the three coats normally required for conventional methods. In addition, dry-set is water cleanable, has high impact resistance and can be used successfully on exterior surfaces. Dry-set can cut the weight of the tile bed to  $1/8$

of a conventional installation, and a job that might take nine days by the old method can be done in two days.

#### Where to Use

A. Dry-set mortar is excellent for setting tile on:

##### *Concrete Masonry*

Also minor irregularities can be smoothed and leveling easily done. Dry-set mortar was specifically developed for installing tile on the various types of light weight and dense concrete masonry. Wetting of blocks causes them to expand. Then they later contract and may compress tile installed in the conventional manner. With dry-set mortar wetting and consequent expansion and contraction is avoided.

##### *Brick*

Dry-set is fine for setting tile over brick.

##### *Poured Concrete*

Dry-set mortar will adhere extremely well to clean concrete. However, it will not hold to concrete which has been cast in forms coated with plastic, wax or grease. Such surfaces should be sand-blasted before applying dry-set mortar.

##### *Portland Cement Plaster*

This type of plaster is an excellent backing for the mortar. Allowing the plaster to cure is a good practice because most of the shrinkage will occur before the tile is set.

\* \* \* \* \*

#### **Plasterers' Exhibit No. 17**

### **1965 HANDBOOK FOR CERAMIC TILE INSTALLATION**

Tile Council of America, Inc.

**MATERIALS FOR SETTING CERAMIC TILE**

#### **Introduction:**

The following are the most widely used materials for setting ceramic tile and each possesses specific qualities

that make it ideal for installing tile over certain backings or under a given set of conditions.

Conventional cement mortar is the only "thick bed" method while all of the others fall into the thin setting-bed method. However all of the thin-bed materials can be used to bond ceramic tile to a cement mortar bed in lieu of the customary neat cement bond coat. The neat cement bond coat can be used only while the cement mortar is fresh and plastic, while the thin-bed materials are applied after the mortar bed has cured and dried out.

#### Cement Mortar:

A mixture of portland cement and sand roughly in proportions of 1:6 on floors and of portland cement, sand and hydrated lime in proportions of 1:5:1½ for walls. This is the traditional material for setting ceramic tile and is suitable for most all surfaces and ordinary types of installation. The thick bed; ¾" to 1" on walls, ¾" to 1¼" on floors facilitates accurate slopes or planes in the finished tile work.

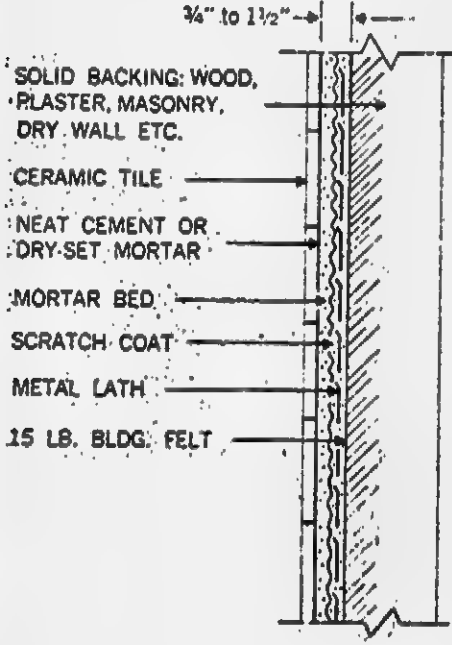
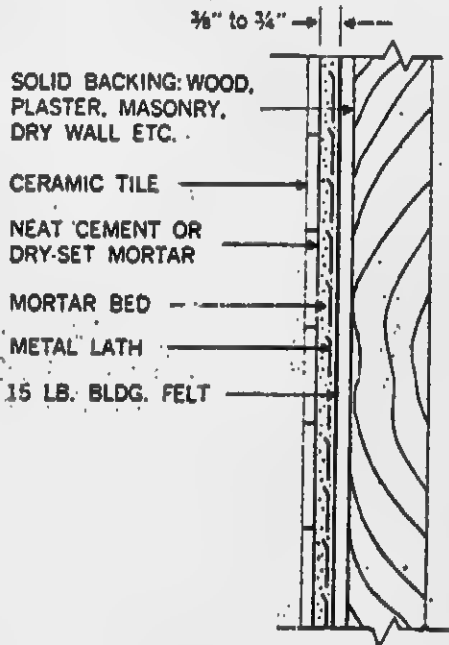
The neat cement bond coat, used between tile and mortar bed provides a bond strength averaging 100 to 200 psi. This method requires a waterproof backing, multiple layers, soaking of wall tile. Available everywhere.

#### Dry-set Mortar:

Presanded Portland cement with additives imparting water retentivity to mix. Suitable for use over concrete masonry, brick, poured concrete, portland cement plaster, foam glass, gypsum wallboard, ceramic tile, marble and other surfaces, depending on conditions. Is used in one layer, as thin as 3/32 in. Provides bond strength up to 500 psi. Excellent water and impact resistance. Can be leveled, is water cleanable, non-inflammable, and good for exterior work. Requires no presoaking of tile. Available in two forms: Formula 759 for ceramic mosaic tile, quarry tile and pavers (all impervious and vitreous tile) and Formula 763 for wall tile (non-vitreous tile). Licensed by Tile Council and supplied by:

\* \* \* \* \*

**Solid Backing**

Cement Mortar 204	One Coat Method 205
 <p>3/4" to 1 1/2" →</p> <p>SOLID BACKING: WOOD, PLASTER, MASONRY, DRY WALL ETC.</p> <p>CERAMIC TILE</p> <p>NEAT CEMENT OR DRY-SET MORTAR</p> <p>MORTAR BED</p> <p>SCRATCH COAT</p> <p>METAL LATH</p> <p>15 LB. BLDG. FELT</p>	 <p>3/8" to 3/4" →</p> <p>SOLID BACKING: WOOD, PLASTER, MASONRY, DRY WALL ETC.</p> <p>CERAMIC TILE</p> <p>NEAT CEMENT OR DRY-SET MORTAR</p> <p>MORTAR BED</p> <p>METAL LATH</p> <p>15 LB. BLDG. FELT</p>

**Recommended Uses:**

- over masonry, plaster or other solid backing that provides firm anchorage for metal lath.
- ideal for remodeling or on surfaces that present bonding problems.

**Limitations:**

- use furring strips (detail 207) if lath attachment cannot be made directly to backing.
- cut lath at all control joints.

**Preparation:**

- apply 15 # felt, metal lath (self-furring lath preferred) and scratch coat.
- require a leveling coat if variation in scratch coat exceeds 1/4" in 8' 0" or if thickness of mortar bed would exceed 3/4".

## Published Specifications:

- glazed wall tile—ASA A108.1-1958.
- ceramic mosaics—ASA A108.2-1958.
- quarry tile and pavers—ASA A108.3-1958.

## Materials:

- 15 # building felt (or 4 mil polyethylene film).
- portland cement—ASTM C-150 type 1.
- hydrated lime—ASTM C-206 type S or ASTM C-207 type S.
- sand—ASTM C-144.
- scratch coat—1 p.c., 5 damp sand,  $\frac{1}{3}$  lime.
- mortar bed—1 p.c., 5 damp sand,  $\frac{1}{2}$  lime.  
in West Coast states—1 p.c., 5-7 sand, 1 lime.
- bond coat—portland cement paste or dry-set mortar.

*Note: bond coat of dry-set mortar over cured mortar bed permits shrinkage of mortar to take place before tile is installed.*

- control joints (see pages 14-15).
- grout—specify type (see page 5).

## Control Joint Location:

- directly over control joints and 24' to 36' elsewhere.

## Recommended Uses:

- over masonry, plaster or other solid backing that provides firm anchorage for metal lath.
- ideal for remodeling or on surfaces that present bonding problems.
- ideal for remodeling where space limitations exist.
- preferred method of applying tile over gypsum plaster or wallboard in showers and tub enclosures.

### Limitations:

- use furring strips (detail 207) if lath attachment cannot be made directly to backing.
- cut lath at all control joints.
- variation in backing must not exceed  $\frac{1}{4}$ " in 8'-0".

### Preparation:

- apply 15 # felt and metal lath.

### Published Specifications:

- glazed wall tile—ASA A108.1-1958.
- ceramic mosaics—ASA A108.2-1958.
- quarry tile and pavers—ASA A108.3-1958.

### Materials:

- 15 # building felt (or 4 mil polyethylene film).
- portland cement—ASTM C-150 type 1.
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- sand—ASTM C-144.
- mortar bed—1 p.c., 5 damp sand,  $\frac{1}{2}$  lime.  
in West Coast states—1 p.c., 5-7 sand, 1 lime.
- bond coat—portland cement paste or dry-set mortar.

*Note: bond coat of dry-set mortar over cured mortar bed permits shrinkage of mortar to take place before tile is installed.*

- control joints (see pages 14-15).
- grout—specify type (see page 5).

### Control Joints Location:

- directly over control joints and 24' to 36' elsewhere.
- •     •     •     •     •     •     •

## Plasterers' Exhibits 20 (A thru U)

Exhibit 20A

March 31, 1959

Mr. Charlie Montgomery  
2508 Franklin  
Waco, Texas

Dear Mr. Montgomery:

We were pleased to learn from Jack Powers that you and Mrs. Montgomery plan to attend our seventh annual convention in Austin, April 30 and May 1 and 2.

During the past few years there have been a number of instances wherein plans and specifications did not clearly define the responsibilities of the tile and lathing and plastering contractors where tile was specified over plaster bases. There have been numerous other instances wherein tile and plastering contractors failed to cooperate in completing a job to the best interests of both our industries.

Our officers feel that plaster and ceramic tile are compatible building materials and that both our industries would benefit if we could reach a definite understanding in those areas where we have had conflicts. We have promoted the use of tile and plaster walls and partitions, and I know your industry has been successful in many instances in selling this combination over competitive materials. I firmly believe a more cooperative effort on the part of both industries would produce results.

Your visit to our convention has been discussed with George H. Brueggeman, our president, and we thought you might like to ask another representative or two from your organization to attend with you. We would welcome the opportunity to name a committee to meet with you in an effort to work out a recommendation to present to our convention.

Jack Powers told me of the plans for your group to form a sales promotion organization and said you would like a representative of our group to meet with you during your convention in Dallas the last weekend in April. This is the weekend before our convention opens on April 30, and I would like to know about what time you would like for me to visit with you. Do you think it would be more appropriate to meet with a committee from your group rather than to try to discuss our organization with your full convention body? Jack did not know just where the convention will be, so I will appreciate having this information if you feel information on the Texas Bureau for Lathing and Plastering will be helpful to your group.

Thank you for your interest and we look forward to having you with us in Austin.

Sincerely,

C. S. STRAWN

hb

BCC. Brueggeman  
Jack Powers



UNITED TILE CO. INC.  
2506 FRANKLIN AVENUE      PHONE 2-5508  
WACO, TEXAS

April 3, 1959

Mr. Charlie Strawn  
Texas Lathing Plastering Contractors  
Perry-Brooks Building  
Austin, Texas

Dear Charlie:

Received your letter dated March 31 and was glad to hear from you. We are very much interested in organizing our tile association like the plastering contractors, and I think like you, that we can team up on promoting tile and plaster for the benefit of both associations.

If you can make it to the convention in Dallas and explain the way you boys arrived at your plan of operations, I am sure the association would appreciate it very much. We are presenting this to the body of tile contractors as the aims of the association and it will help us to get our membership built up.

I have arranged to have you on the Saturday afternoon program at 1 o'clock with all of the time you want, so I hope you can be able to do this for us, as I feel it will help both associations.

The dates for our meeting is Friday and Saturday, April 24 & 25 at the Western Hills Inn between Dallas and Fort Worth on Highway 183. I will be able to have a committee from our association at your convention to be at your service.

Sincerely,

UNITED TILE Co., Inc.  
CHARLIE MONTGOMERY  
Charlie Montgomery

COM/ja

April 7, 1959

Mr. Charlie Montgomery  
United Tile Company, Inc.  
2506 Franklin Avenue  
Waco, Texas

Dear Charlie:

Thank you for your letter of April 3 and the invitation to visit with you during your convention in Dallas.

I will be glad to discuss with your group the organization of our contractors association and also the Texas Bureau if you are interested in the organizational structure of both endeavors by contractors and journeymen.

Since your meeting is the week end before our state convention, it will probably be necessary to go up Saturday morning and return to Austin that afternoon. I surely do appreciate your arranging for me to meet with you at 1 p.m. This will fit my schedule very well.

We are glad to know that you have arranged for a committee from your association to visit with us at our annual convention and feel that it will be mutually beneficial.

Sincerely,

C. S. STRAWN

psg

Exhibit 20D

To: Guy Beney  
From: George Brueggeman  
Date: May 16. 1959

In the rush and confusion of convention activities, I neglected to find out from you if your Tile and Plaster Committee had a chance to talk with Charlie Montgomery. I believe there is a good possibility of working out something to our mutual benefit.

I will be glad to assist in any way possible in setting up a committee meeting between our association and the tile contractors.

Charlie Strawn and I plan to visit you in Beaumont the next time he is down this way and perhaps we can complete plans for a committee meeting at that time.

We enjoyed having you and Mrs. Beney at the Austin convention and hope you will let us hear from you if we can be of assistance in the Beaumont area.

Exhibit 20E

TEXAS LATHING AND PLASTERING CONTRACTORS  
ASSOCIATION  
PERRY-BROOKS BUILDING  
AUSTIN, TEXAS

To: Guy Beney  
From: C. S. Strawn  
Date: July 15, 1959

Charlie Montgomery has notified us of the quarterly meeting of the Ceramic Tile Contractors Association at the Ben Milam Hotel, Houston, June 24 and 25.

He would like for our committee to meet Saturday afternoon, July 25. You were named as chairman of the committee composed of Red Kraas, Alamo, and Jack Powers, Waco, and it will be appreciated if you will let me know if you will be able to attend.

George Brueggeman will also be present for the meeting. I am going to Waco this afternoon and will probably have a chance to discuss the meeting more specifically with Charlie Montgomery and will notify you of the hour selected for the meeting.

CHARLIE

Dear Charlie:

I presume you mean the Association will meet July 24 and 25, not June.

Yes, I will meet with the committee on Saturday. Please let me know the time, place and room number.

GUY BENEY

## Exhibit 20F

Guy Beney  
C. S. Strawn  
July 20, 1959

Thank you for letting us know you will be able to attend the committee meeting with the tile contractors at the Ben Milam Hotel in Houston Saturday, July 25. You are right in assuming the meeting will be on July 24 and 25 rather than in June.

I talked with Charlie Montgomery in Waco last week and he said they would probably be able to have the committee meeting about 2 P.M. Saturday afternoon. I suggest you check with him as soon as you get to the hotel.

At the present time it looks like George Brueggeman, Red Kraas, Alama and Jack Powers, Waco, will be present for the meeting. I regret that I will be unable to attend but it is necessary that I leave Friday for the annual meeting of the National Bureau for Lathing and Plastering in Denver. I know you and the committee will be able to get things started and I will do everything I can to help work out an agreement that will be mutually beneficial for us.

## Exhibit 20G

TEXAS LATHING PLASTERING CONTRACTORS  
ASSOCIATION

To: TLPCA Members  
From: George Brueggeman  
Date: December 3, 1959

For some time we have talked about the desirability of setting up of a joint committee with the Ceramic Tile Contractors Association for the purpose of clarifying job specifications.

Charlie Montgomery attended our Austin convention as a representative of the Ceramic Tile Contractors Association.

As a result of this visit, we scheduled a committee meeting between the two associations in Houston July 25.

Members named to the committee by the Association are:

Guy Beney, Beaumont—Chairman  
 Jack Powers, Waco  
 C. F. Kraas, San Juan  
 George Brueggeman, Houston—Ex officio member

Due to storm conditions on the coast, Guy Beney and Red Kraas were unable to make the meeting. Jack Powers and I sat in with representatives of the Tile Contractors Association which included Charlie Montgomery, Bill Love, Lee Munz and a Mr. Young, Tile Setters International Union Representative from Oklahoma.

I believe we made considerable progress in paving the way for a clear and definite understanding of the work to be performed by the lathing and plastering contractors and the tile contractors. It is our hope that this understanding will result in a joint specification. We all agreed that at our next meeting we could probably come up with an agreement that could be presented as a recommended specification.

In our discussion, three sets of specifications were considered:

1. Portland Cement mortars
2. Water Resistant Organic Adhesives
3. Mastic Adhesives

No. 2 and 3 are thin set methods. Because Plasterers use a different terminology from that of Tile Setters, this terminology, had to be cleared first.

Scratch Coat—First Coat on Metal Lath or Mesh.

Brown Coat—Second Coat on Lath and First Coat on Masonry.

These two coats belong to plasterers.

This brown coat is generally known as the plumb coat or leveling coat to the tile man.

### Float Coat or Setting Coat:

This is the coat that goes over the brown coat and is put on by the tile setter. If regular cement mortar is used, it is approximately  $\frac{3}{8}$ " thick. If thin set is used, it is  $\frac{1}{8}$ " thick. If adhesive is used, it is  $\frac{1}{16}$ " thick. Glazed tile wall is  $\frac{3}{8}$ " thick. Unglazed Mosaic is  $\frac{1}{4}$ " thick.

In thin set method or adhesive set, tile contractors felt the use of corner beads was beneficial.

In thin set the adhesive installations, gypsum plaster can be used but with thin set the tile contractor must first paint on a sealer coat.

Masonry cement is as good as Portland and lime.

It was agreed that both associations would endeavor to have the architect specify the system in his specification and also specify it in the plaster specifications.

It was agreed that it was to the best interests of both our organizations to promote 2" solid partitions with ceramic tile as opposed to structural glazed tile units.

Tolerances were discussed:

For thin set mastic	$\frac{1}{8}$ " in 8 feet
For thin set	$\frac{1}{8}$ " in 4 feet
For regular	$\frac{1}{4}$ " in 8 feet

For thin set, finish may be rodged (not smooth) and if the wall above the wainscot is plastered first, it shall be troweled down to a featheredge.

Attached is a copy of a specification for tile work and a copy of a decision in the Green Book on the preparation of walls and ceilings to receive tile.

It will be appreciated if after studying this report each of you will let us have your comments and suggestions on the continuation of the work of this committee.

Your Comment Please!

Exhibit 20H

February 15, 1960

C. O. Montgomery

I talked with George Brueggeman about the possibility of a meeting of the Plaster-Tile Committee prior to our state convention April 28, 29 and 30.

We have a Directors' meeting scheduled in Austin Saturday, March 12. George asked me to check with you and see if you could have your committee meet with the plaster committee Sunday morning, March 13. If we could work out an acceptable specification at this meeting both groups could present it to their state meetings in April.

If both groups approved the specification, we could publish and mail to architects and lath and plaster and tile contractors early in May.

It will be appreciated if you will let me hear from you as soon as possible. The meeting will be in the Commodore Perry Hotel.

C. S. STRAWN

psg

Copy to George Brueggeman

Exhibit 20I

UNITED TILE CO., INC.

2506 FRANKLIN AVENUE      PHONE PL 2-5508

WACO, TEXAS

February 16, 1960

Charlie:

Sunday morning, March 13 is ok with me and I will plan to have my bunch in Austin at that time.

CHARLIE

Charlie Montgomery



Exhibit 20J

Red Kraas

March 2, 1960

C. S. STRAWN

I have discussed with George Brueggeman and Charlie Montgomery the possibility of getting the tile and plaster committee together Sunday morning after our Directors meeting Saturday. They thought this would be a good idea and we plan to get the meeting started around 10 or 10:30 Sunday. I hope it will be possible for you to stay over a little while Sunday and maybe we can reach some agreement on a standard specification to furnish architects.

Let's not forget the suggestion we had on another contractors' meeting in the Valley. I will probably be pushed from now until the convention, but if you will select a date, I will do my best to be there.

Thanks for sending the information on the photograph.

Exhibit 20K

March 2, 1960

Charlie Montgomery

I am glad that your committee will be able to meet with us Sunday morning, March 13 at the Commodore Perry Hotel in Austin. We will probably meet in the Capitol Room and will try to get started by 10 or 10:30.

It will be appreciated if you will let me know if anything happens to prevent the attendance of your committee.

C. S. STRAWN

psg

Exhibit 20L

Jack Powers

March 2, 1960

C. S. Strawn

The Board of Directors of the contractors' association will meet in Austin Saturday, March 12. George Brueggeman thought it would be a good idea for us to have a meeting of our Lathing and Plastering-Ceramic Tile Committee Sunday morning, March 13 about 10 or 10:30.

Bill Montgomery said this date would suit him and he will have representation from his association present.

It will be appreciated if you will let me know if you can attend this meeting Sunday morning.

Exhibit 20M

TEXAS LATHING PLASTERING CONTRACTORS  
ASSOCIATION

To: Ray Taylor  
George Brueggeman  
George Barnard  
Charlie Montgomery  
Bill Love

From: C. S. Strawn

Date: June 28, 1960

Attached is a suggested letter for transmittal of the plaster and tile guide specifications.

It will be appreciated if you will look it over and let us have your comments and suggestions.

It is agreed that the specification will not be distributed by either Texas Lathing and Plastering Contractors Association or the Tile Contractors Association until both groups have agreed on the manner of including the amendments recommended by TLPCA and the method of transmittal.

It is suggested that at least in the beginning the transmittal letter be made a part of the guide specification even when personally delivered.

TEXAS LATHING PLASTERING CONTRACTORS  
ASSOCIATION

May We Present  
This Guide Specification

To assist specification writers to establish the responsibility of the lath and plaster contractor and the ceramic tile contractor in plans and specifications requiring tile application over plaster bases.

We realize that in the past there has been a certain "no-man's" land between the plaster scratch coat and the application of ceramic tile. The attached Guide Specification is a sincere attempt on the part of the lath and plaster contractors and the tile contractors to detail the responsibility of each.

Your review and comments on the specifications are invited and we recommend the use of the Guide in developing future specifications including plaster and tile application.

---

GEORGE BARNARD  
*President*  
Texas Ceramic Tile  
Contractors Association

---

RAY B. TAYLOR  
*President*  
Texas Lathing and  
Plastering Contractors  
Association

Exhibit 20N

TEXAS CERAMIC TILE CONTRACTORS ASSOCIATION, INC.  
2825 Bledsoe Fort Worth 7, Texas

July 8, 1960

Mr. C. S. Strawn  
Executive Director  
Texas Lathing and Plastering Contractors Association, Inc.  
8 Perry-Brooks Building  
Austin 1, Texas

Dear Mr. Strawn:

I appreciate very much receiving a copy of the suggested plaster and tile guide specifications. I agree with you that the letter of transmittal should accompany the specifications, at least in the beginning. I believe that the specifications are very well written as well as the letter of transmittal.

You may expect the whole hearted cooperation from the Texas Ceramic Tile Contractors Association as well as my personal endorsement. Both industries have needed these specifications for a long time and may I offer my sincere thanks to you and your organization for the work you have done along this line.

Again, I would like to state that if we can be of any service to you, please feel free to call on us and we will do everything in our power to help you put these specifications across to the architects.

Very truly yours,

GEORGE BARNARD  
George Barnard, *President*

GB/mi

Exhibit 200

August 1, 1961

Bill McHarg  
Joe Rourke

Although the tile and plaster contractors reached an agreement on our specification and made plans to distribute them jointly, we have not taken action to follow through on this agreement.

Attached is a suggested letter for transmittal of the guide specification and a copy of the specification as agreed upon in the joint committee meeting in Austin March 13, 1960.

If the letter of transmittal, the Lathing and Plastering Contractors Association will proceed with plans to print and distribute the specification. We will transmit them to architects and specification writers with this suggested letter attached.

Several months ago we cleared this with George Barnard and Ray Taylor, but this office failed to distribute the specification as suggested.

If the letter of transmittal and specification meet with your approval, it will be appreciated if you will initial each page and return for publication.

C. S. STRAWN

psg

MASTER COPY  
RELATED CRAFT SPECIFICATION:  
LATHING AND PLASTERING DIVISION

*Introductory:*

The following explanations and notes are presented to assist specification writers to establish the responsibility of the lathing and plastering contractor and the ceramic tile contractor in plans and specifications requiring tile application over plaster bases.

To obtain consistent and accurate estimates of lath and plaster and ceramic tile installations, the specifications should impose certain requirements on the craft responsible for the backing and base material and application of ceramic tile.

To eliminate the duplication in bidding and omission of work to be performed, the following recommendations are presented for the consideration of the specification writer and may be appropriately inserted in the Lath and Plaster and/or Ceramic Tile Divisions of the specifications.

*A. General:*

1. In all instances where Scratch Coat (first coat on metal lath) and Brown Coat (second coat on metal lath and plumb or levelling coat on Masonry) is specified, this portion of the work will be furnished and installed by the Plasterer, under his Contract.  
Exception: Where three bathrooms, vestibules and small halls or less, in private residences require scratch and brown coat plaster, such work will be included under tilework and performed by tile layer.
2. It will be the responsibility of this Contractor to obtain the method, or methods, of installation specified for the tile work by the Architect, and generally

/s/ J. E. R.

governed by one or more of the following methods assigned by a reference number:

**Method No. 1.**

**Conventional: Portland or Masonry Cement Plaster Mortars**

**Method No. 2.**

**Thin-Set: Mastics, Organic Adhesives**

**Method No. 3.**

**Thin-Set: Dry-Set Portland Cement Mortars (Inorganic)**

**B. Material:**

**1. Scratch and/or Brown Coat:**

- (a) **Method No. 1, Conventional:** To have Portland Cement or Portland-Masonry Cement Mortar Scratch and/or Brown Coat scarified (cross-scratched) to receive regular cement mortar of approximately  $\frac{3}{8}$ " thickness, defined as Float Coat or Setting Bed, installed by the Tile Contractor.
- (b) **Method No. 2, Thin-set (Mastic):** Unless otherwise specified, Brown Coat to be gypsum plaster, trowel finished to receive approximately  $\frac{1}{16}$ " mastic setting bed by Tile Contractor. (Refer to Plans and Specifications where wet areas may call for Portland Cement Plaster Brown Coat.)
- (c) **Method No. 3, Thin-set (Mortar):** Brown Coat to be Portland Cement or combination Portland-Masonry Cement Mortar (Specify), rod finished (not trowelled) to receive  $\frac{1}{8}$ " thickness of Dry-Set Mortar setting bed by Tile Contractor.

/s/ J. E. R.

## 2. Corner Beads:

To be furnished on all external corners where Method 2 or 3 are specified. No Corner Bead required with Method No. 1, unless specified for Plaster Walls above Tilework, then Start Bead  $\frac{1}{2}$ " below top of the Tile Finish Line.

3. A metal T-Bar or Metal Stop to be provided, if required, where tile finishes flush with plaster. (Specify)

## C. Installation:

### 1. Brown Coat:

- (a) Mortar or plumb screeds will be used to insure a plumb, square cornered and plane surfaced area within the following tolerances;

Method No. 1	$\frac{1}{4}$ " in 8 feet
Conventional	

Method No. 2	$\frac{1}{8}$ " in 8 feet
Thin-set Mastic	

Method No. 3	$\frac{3}{16}$ " in 8 feet
Thin-set Mortar	

- (b) When walls above tile wainscott are plastered, the finished surface will be continued 1" below top of tile finish line.
- (c) When tile is to finish flush with plaster, then Brown Coat behind Tilework to be of correct thickness to allow tile and setting bed to finish flush with finished plaster face.
- (d) When wall tile is detailed or specified to be flush with plaster, use one of the following options:
1. Plaster finished to tile: at junction of cushion edge tile and plaster finish, cut a "V" joint

/s/ J. E. R.



or shallow line of demarcation in plaster. In case of square edge tile, use of a demarcation line is optional.

2. Tile finished to Plaster: at junction of tile to plaster a metal screed (T-Bar Base Screed or metal stop) will be furnished by the plasterer. Metal stop to have proper projection, to be straight and level and set to a prescribed height to receive full courses of tile.
2. Spot surfacing or levelling coat: Where no plaster is specified and incidental levelling or spot patching is necessary on masonry surfaces to bring to an acceptable plane where Method 2 or 3 applies, it will be the responsibility of the Tile Contractor to do such work.

*D. Protection:*

If plastering is required over finished tilework, the lathing and plastering contractor is responsible for protecting such work during the period of his work. After acceptance of this portion of the work, by the Architect, it will then become the responsibility of the General Contractor to defend both plaster and tilework.

/s/ J. E. R.

P. Ex. 20Q

[Same as Plasterers' Exhibit 20P except the initials "BBM" appear at bottom of each page]

Exhibit 20R

TEXAS CERAMIC TILE CONTRACTORS ASSOCIATION, INC.  
1009 South Adams Fort Worth 4, Texas

8-2-61

Charlie

Sect. is on vacation so will hand write—

Am returning signed copy of Guide Specification. This is a very good idea and I hope the Architects appreciate the effort your Association and Charlie Montgomery & Bill Love have put into this.

We would like to have extra copies of this spec after you distribute them for our members to personally distribute when they call on an Architect.

If I can be of any assistance please let me know.

BILL B. McHARG

Exhibit 20S

August 4, 1961

Mr. Bill McHarg  
Texas Ceramic Tile Contractors Association  
P. O. Box 3251  
Fort Worth, Texas

Dear Bill:

Thank you for returning the specification so promptly. We are going ahead with plans to publish and distribute it.

We plan to run about 2,500 copies and approximately 1,600 will be mailed to architects along with the covering letter.

The envelopes are already typed and the total cost of printing and mailing the specification will be approximately \$180.00. I wondered if your organization would be interested in bearing this cost with us.

Of course, we will be glad to furnish you a couple of hundred copies or more if you need them.

Sincerely,

C. S. STRAWN

psg

Exhibit 20T

TEXAS CERAMIC TILE CONTRACTORS ASSOCIATION, INC.

P. O. Box 3251

Fort Worth, Texas

August 8, 1961

Mr. C. S. Strawn

Texas Lathing Plastering Contractors Assn.

Perry-Brooks Building

Austin 1, Texas

Dear Charlie:

In answer to your letter of August 4, 1961, the appropriation of money to help cover the cost of mailing these specifications would have to be brought up before the Board of Directors at our next meeting which will not be until January of 1962. We will however at that time bring up this information and see what we can do about it.

Very truly yours,

TEXAS CERAMIC TILE CONTRACTORS'  
ASSOCIATION, INC.

BILL B. McHARG

Bill B. McHarg,

*President*

BBM:jp

Exhibit 20U

August 11, 1961

Mr. Bill B. McHarg  
Texas Ceramic Tile Contractors  
Association, Inc.  
P. O. Box 3251  
Fort Worth, Texas

Dear Bill:

Thank you for your letter of August 8 regarding publication of the specification. Don't worry about the cost as we will go ahead and take care of it, but will welcome any assistance that your Board of Directors may think appropriate.

We have mailed out about 1,700 copies to architect and specification sources throughout the state.

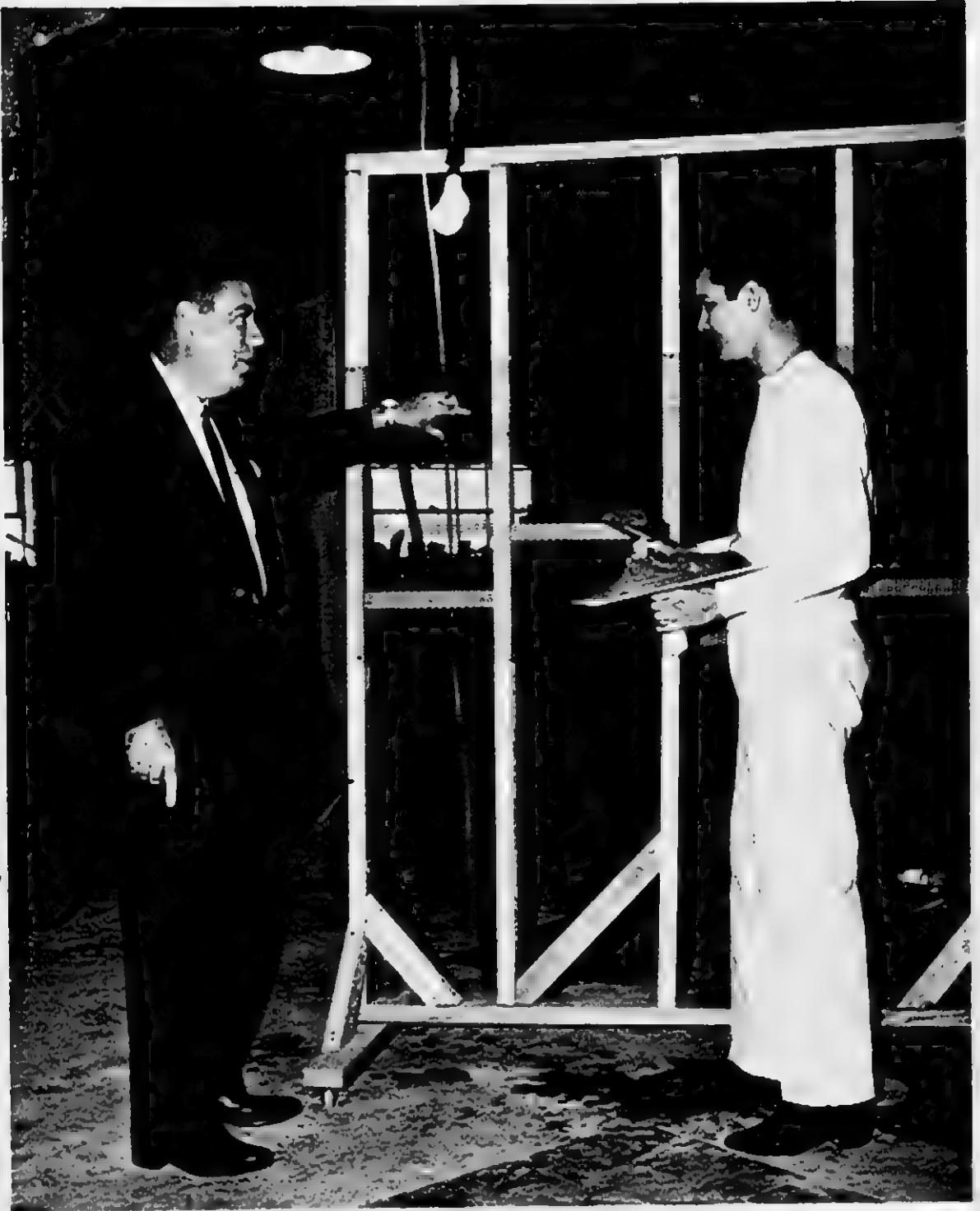
I am enclosing a copy of the specification and under separate cover we are mailing you 100 more. We are also mailing copies to our Association members.

Let us know if you need copies in addition to the ones we are mailing you.

Sincerely,

C. S. STRAWN

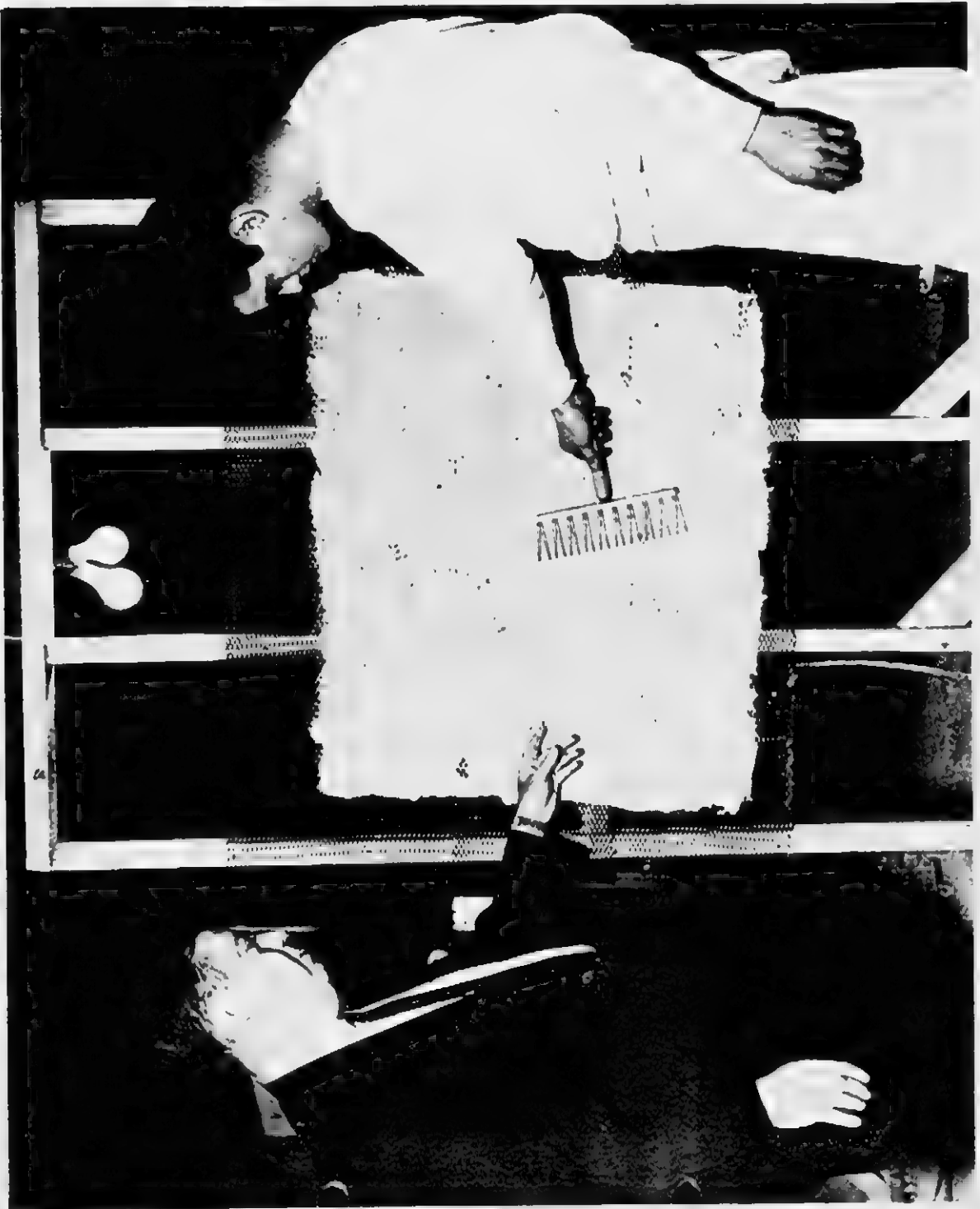
psg



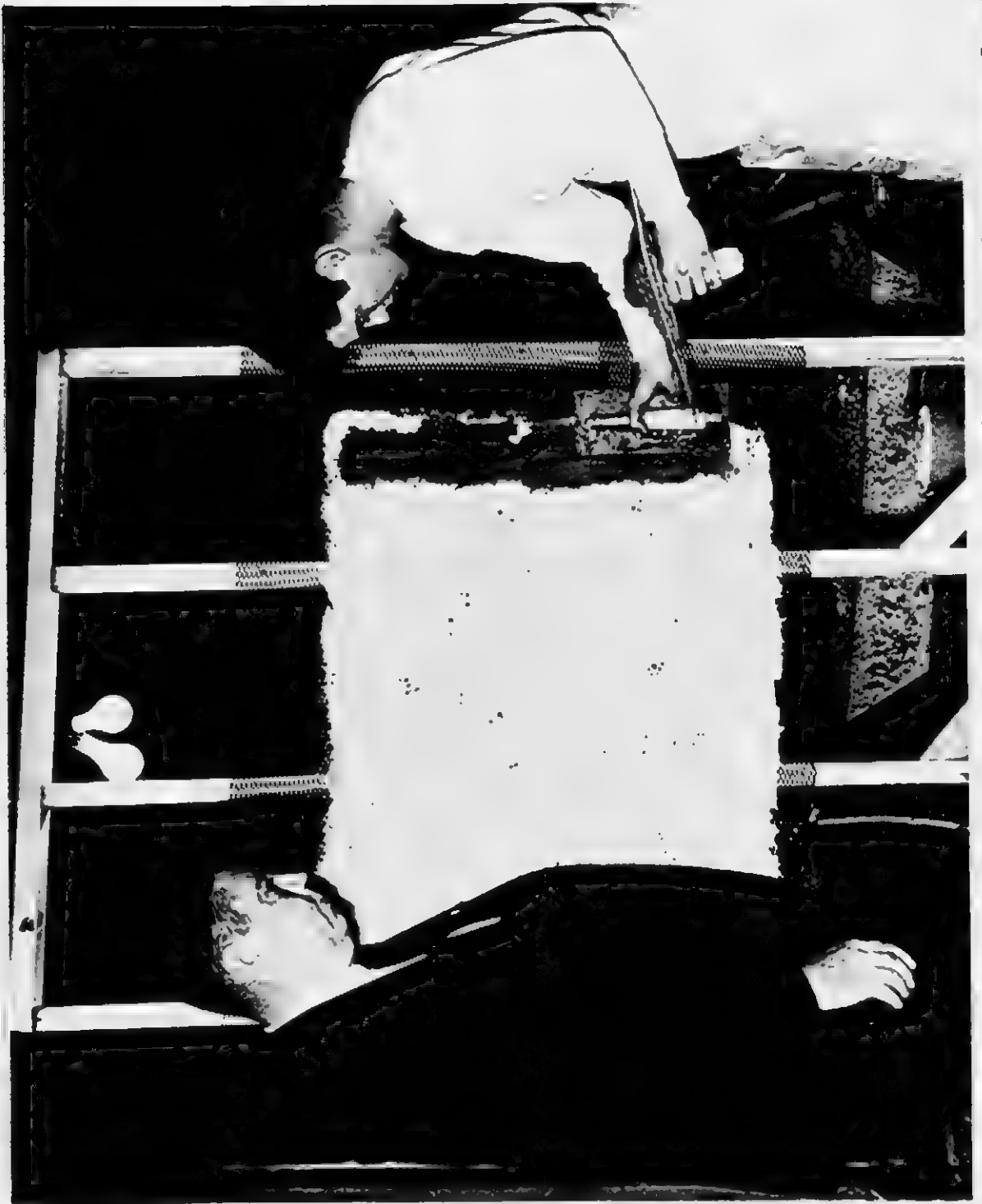
**BEST COPY AVAILABLE**

from the original bound volume



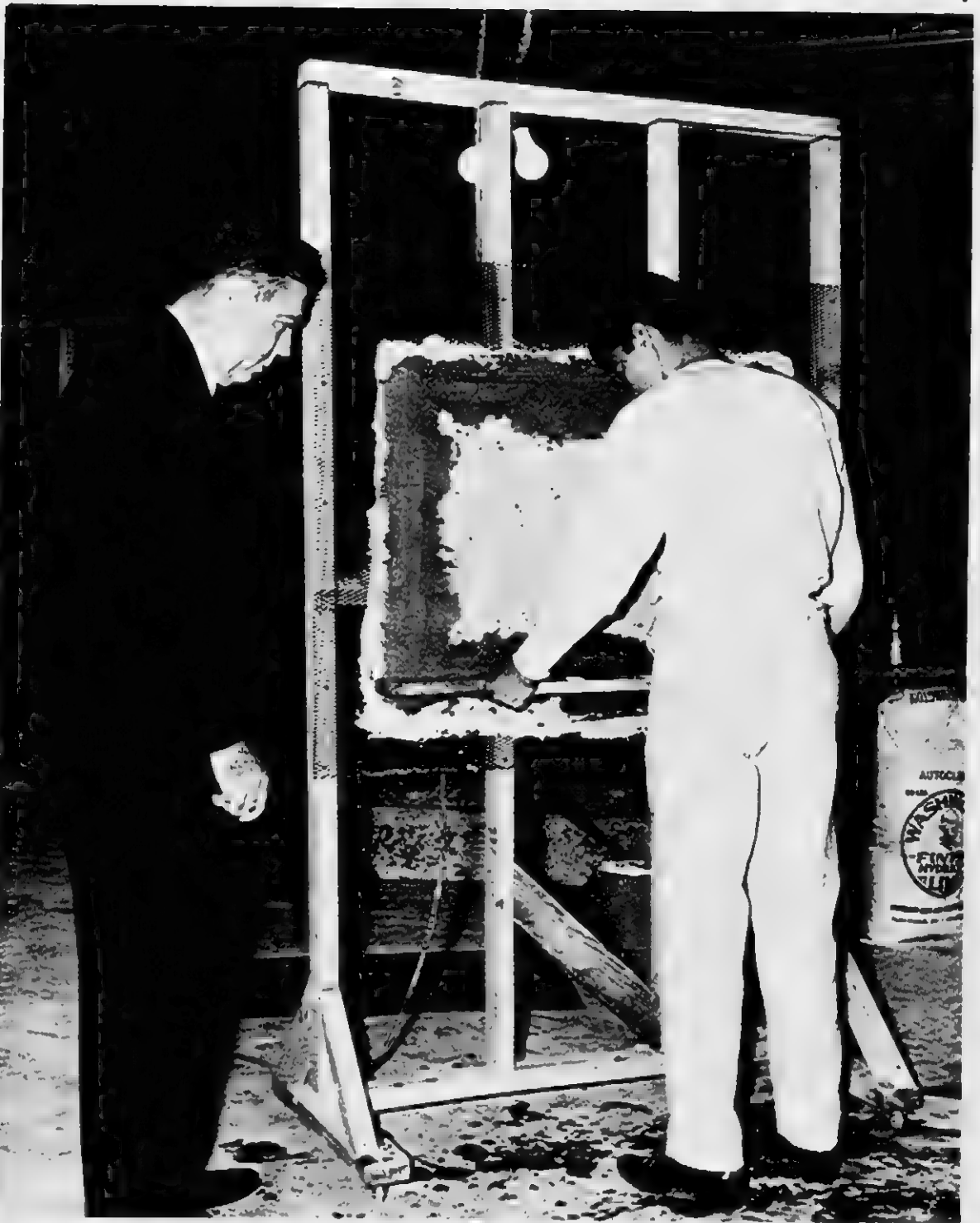


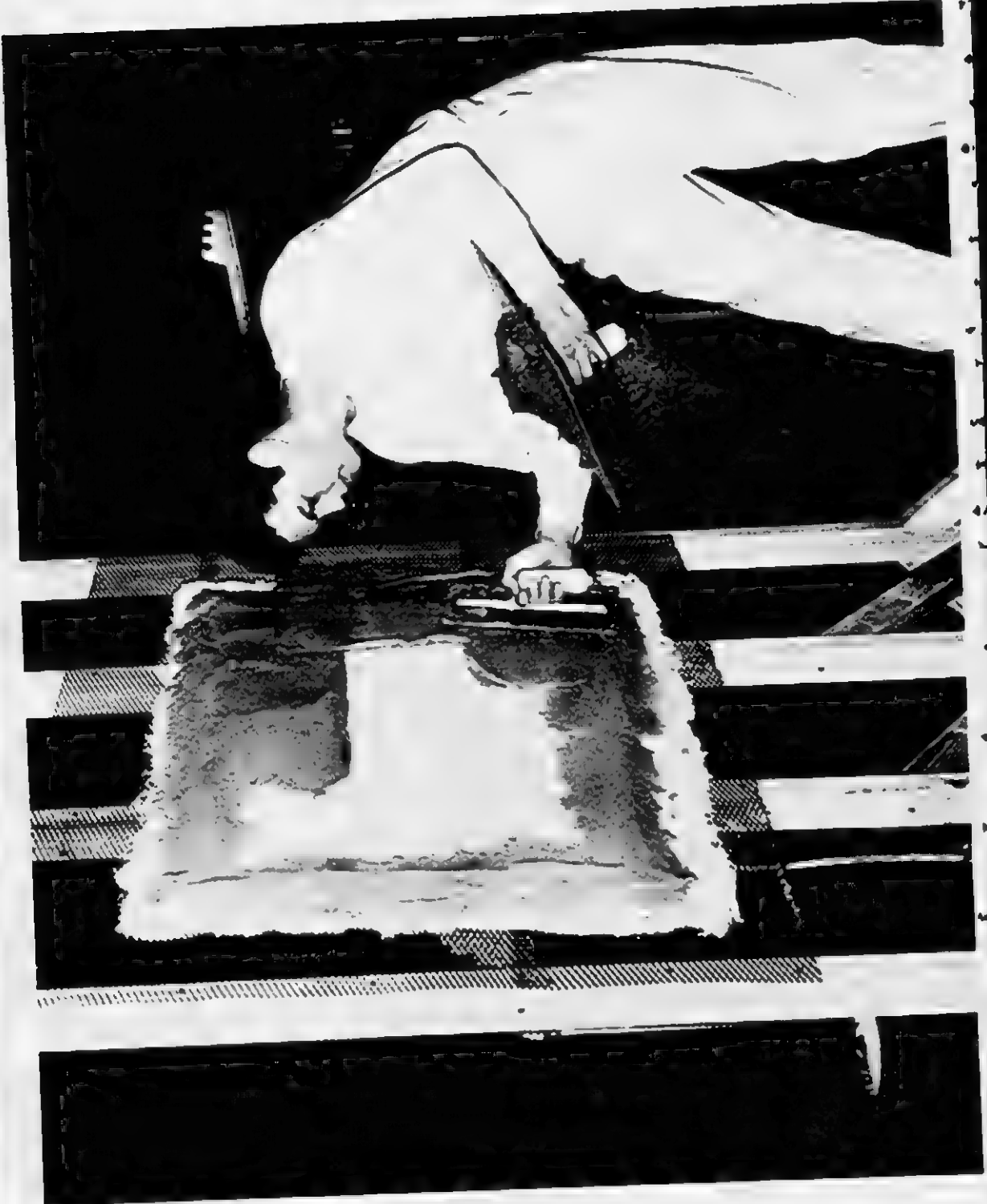


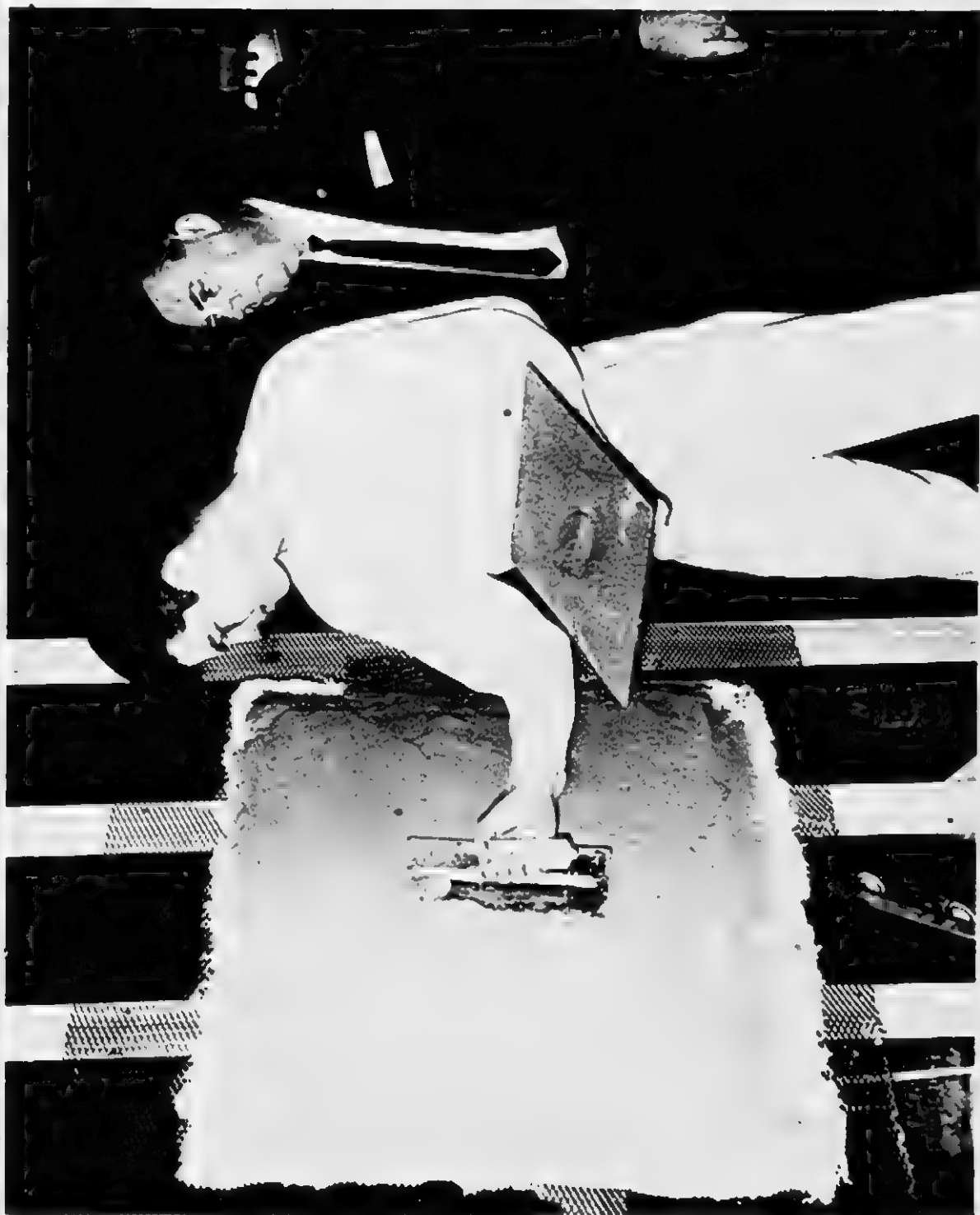






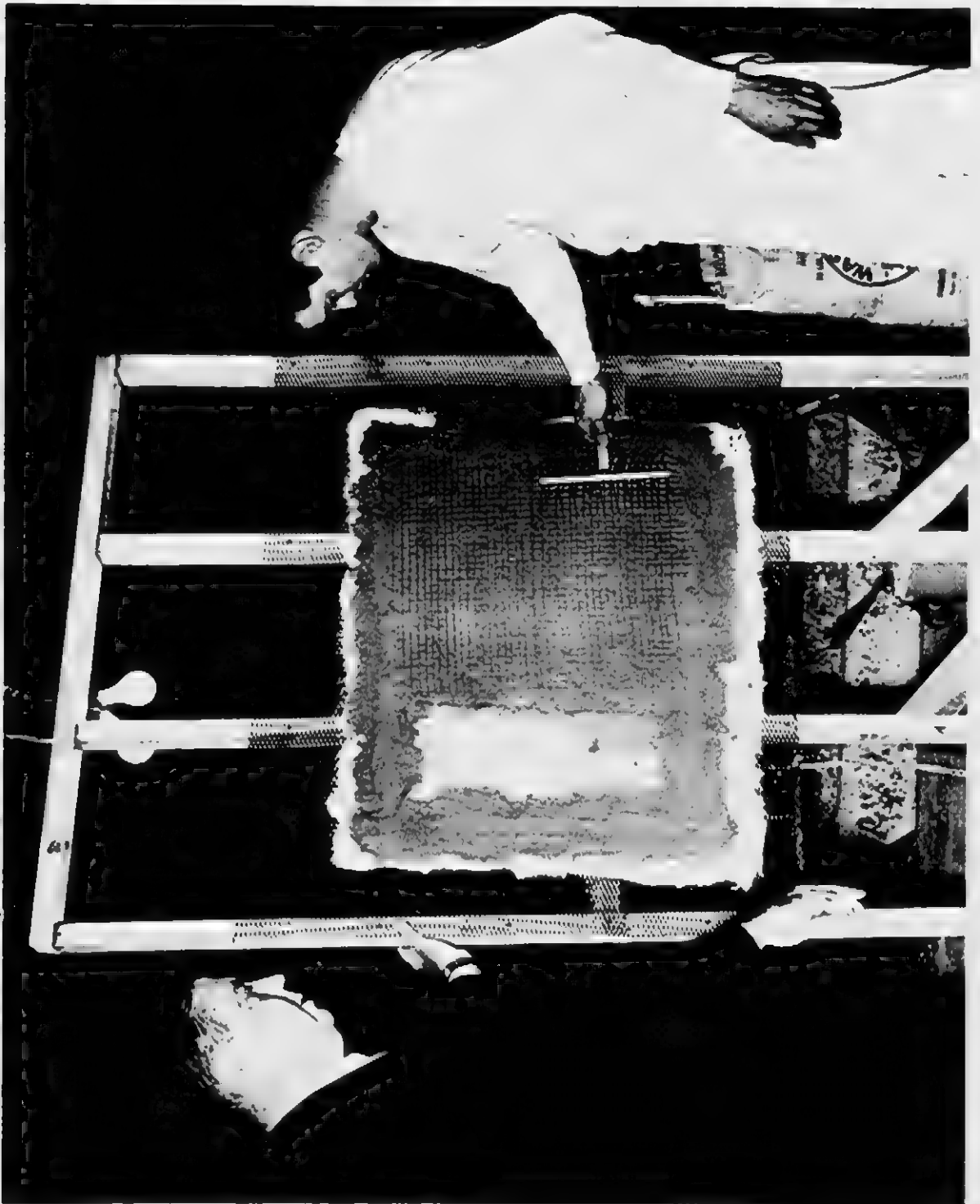




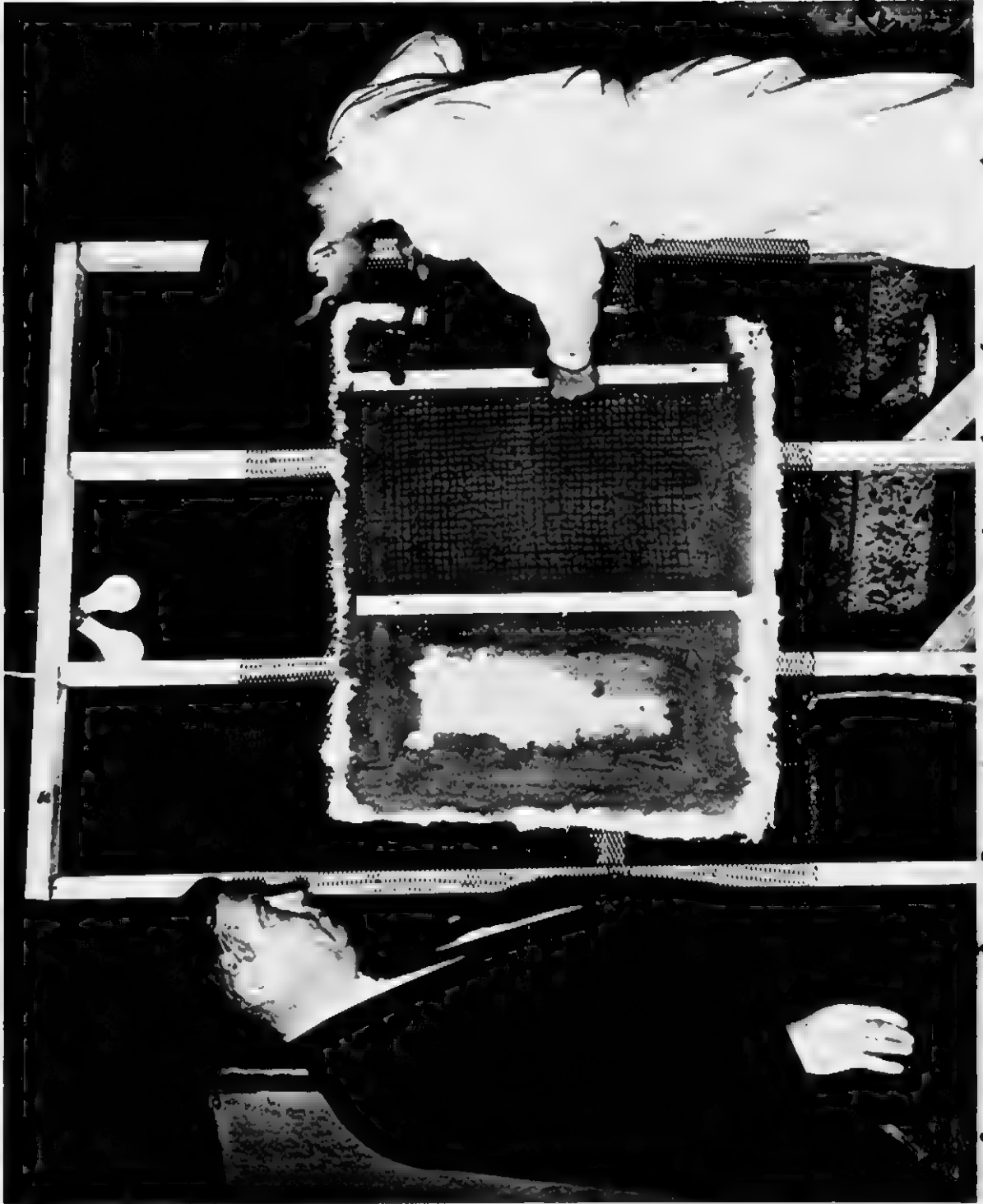


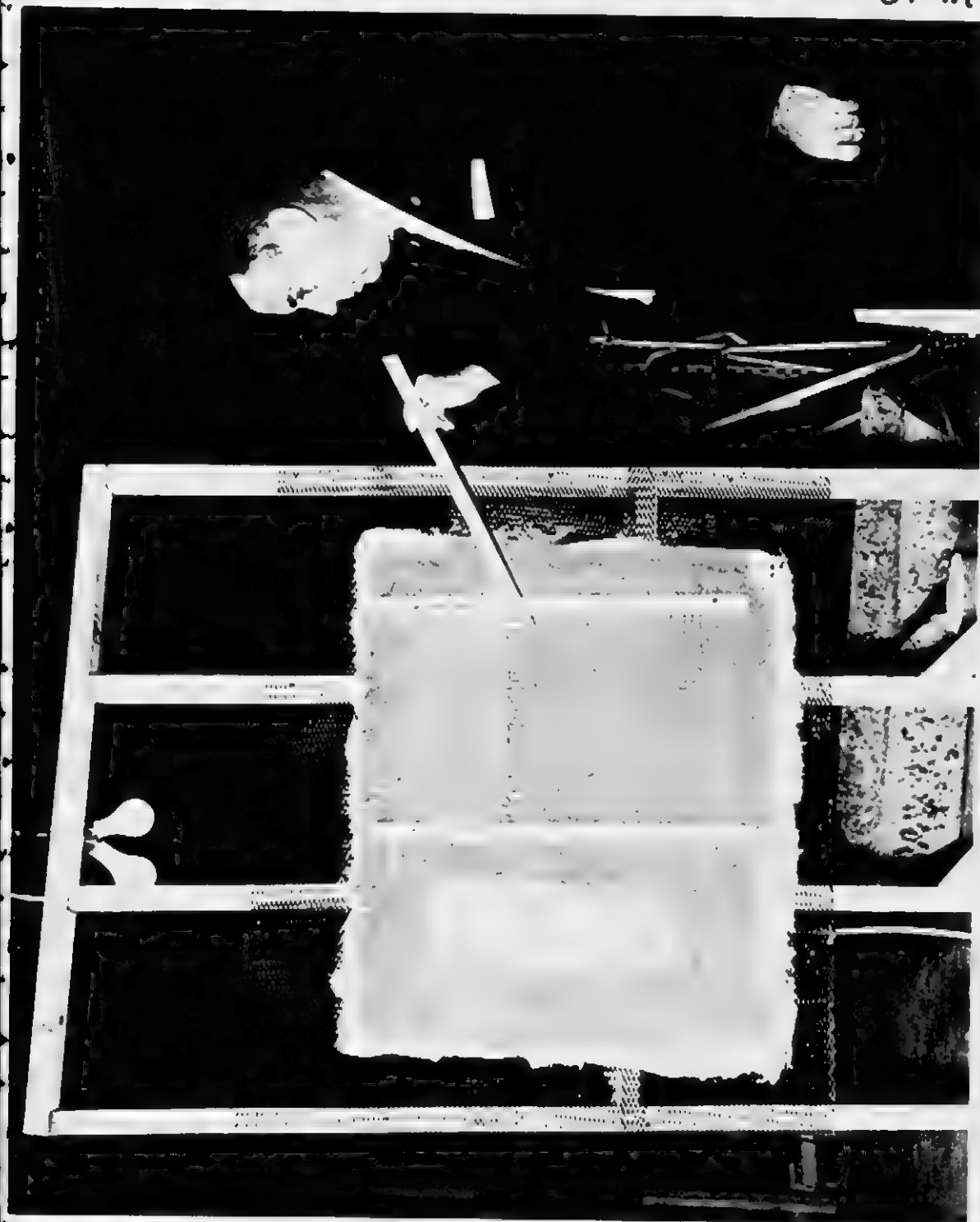


34-K





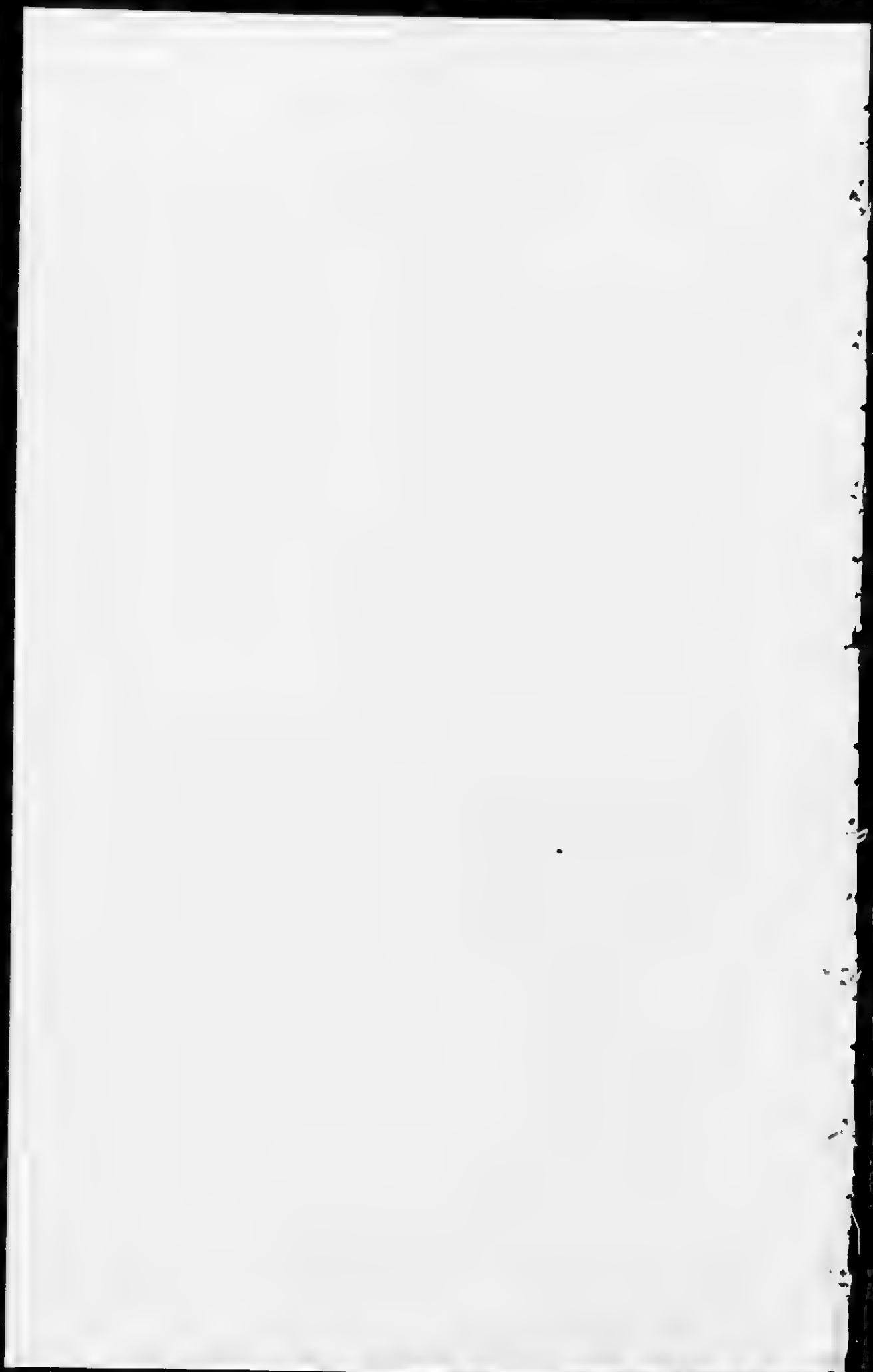






34-0





**Plasterers' Exhibit 35**

Organized February 10, 1908

**CONSTITUTION OF THE BUILDING AND  
CONSTRUCTION TRADES DEPARTMENT  
AFL-CIO 1966**

Amended December, 1965

• • • • •

**ARTICLE II**

**Objects and Principles**

The objects and principles of this body are:

• • • • •

6. To secure the adjustment of trade and jurisdictional disputes in the building and construction trades industry along practical lines as they may arise from time to time; and such decisions to be final and binding on all affiliated National and International Unions and their affiliated Local Unions.

• • • • •

12. To protect National or International Unions affiliated with the Department in their established trade jurisdiction in the building and construction trades industry as historically granted and conferred upon them by the American Federation of Labor and as traditionally exercised by them.

• • • • •

**ARTICLE X**

**Jurisdictional Disputes**

All jurisdictional disputes between or among affiliated National and International Unions and their affiliated Local Unions and employers shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan

or method of procedure adopted in the future by the Department for the settlement of jurisdictional disputes. Said present plan or any other plan adopted in the future shall be recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions.

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P-36A

**Plasterers' Exhibit 36**

**OPERATIVE PLASTERERS' AND CEMENT MASONS'**

**International Association of the United States and Canada**

**October 27, 1966**

**Mr. William J. Cour, Chairman  
National Joint Board for Settlement of  
Jurisdictional Disputes  
815 - 16th Street, N. W.  
Washington, D. C. 20006**

**Re: Dispute between our members and the B.M. & P.I.U. (Tile Setters) over the plumbing, rodding and squaring of walls which are to receive tile on the Houston University Science Building, Cullen Boulevard, Houston, Texas. Southwestern Construction Company, P. O. Box 1204, Houston, Texas 77001, General Contractor, Texas State Tile and Terrazzo Company, 3115 Golfcrest, Houston, Texas, Subcontractor.**

**Dear Mr. Cour:**

**Efforts to resolve the above-mentioned dispute have failed; therefore, it necessitates the submission of this case to the National Joint Board for Settlement of Jurisdictional Disputes. The work in dispute has historically been performed by Plasterers and the Joint Board has rendered many, many decisions to this effect.**

The work in dispute is covered by an Agreement of Record which appears on pages 32 and 33 of the Green Book and is further covered by a Decision of Record which appears on page 104 of the Green Book. We, therefore, respectfully request that the National Joint Board once again rule that the work in dispute rightfully comes under the jurisdiction of the Plasterer members of this International Association.

Very truly yours,

EDWARD J. LEONARD  
Edward J. Leonard  
*General President*

EJL  
lah

P-36B

October 28, 1966

TEXAS 10/28/66

Southwestern Construction Company  
Contractor  
P O Box 1204  
Houston, Texas 77001

Texas State Tile and Terrazzo Company  
Subcontractor  
3115 Golfcrest  
Houston, Texas

Gentlemen:

This office has been advised of a jurisdictional dispute between the Operative Plasterers and Cement Masons International Association and the Bricklayers Masons and Plasterers International Union over the plumbing, rodding and squaring of walls which are to receive tile, Houston University, Science Building, Cullen Boulevard, Houston, Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor.



Please send a full and complete description of the work in dispute, including if possible pictures or prints, to this office by November 4, 1966.

Very truly yours,

WILLIAM J. COUR  
*Chairman*

WJC/lma  
cc: Dale Witcraft—AGC

P-36C

October 28, 1966

TEXAS 10/28/66

Thomas Murphy, General President  
Bricklayers Masons and Plasterers  
International Union  
Bowen Building  
Washington, D. C.

Dear Mr. Murphy:

President Leonard has requested a job decision in a jurisdictional dispute between the Operative Plasterers and Cement Masons International Association and the Bricklayers Masons and Plasterers International Union over the plumbing, rodding and squaring of walls which are to receive tile, Houston University Science Building, Cullen Boulevard, Houston, Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor.

May I have your position with regard to the work in dispute by November 4, 1966.

Very truly yours,

WILLIAM J. COUR  
*Chairman*

WJC/lma  
cc: E J Leonard—Cement Masons

P-36D

## TELEGRAM

SHA112 (57)NSA156 DD140  
 D HSC212 PD HOUSTON TEX 1 1200P CST  
 NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL  
 DISPUTES BLDG AND CONSTRUCTION INDUSTRY ATTN WILLIAM  
 J COUR  
 815 16 ST NORTHWEST PHONE ST 36817 WASHDC  
 RE HOUSTON UNIVERSITY SCIENCE BUILDING YOUR LETTER  
 OCTOBER 28 1966 TO SOUTHWESTERN CONSTRUCTION CO AND  
 TEXAS STATE TILE AND TERRAZZO INC BE ADVISED WE ARE  
 NOT STIPULATED WITH THE NATIONAL JOINT BOARD FOR  
 SETTLEMENT OF JURISDICTIONAL DISPUTES BUILDING AND  
 CONSTRUCTION INDUSTRY WE DESIRE TO MAKE THIS WORK  
 ASSIGNMENT DISPUTE UNDER SECTION 10(K) OF TAFT ACT  
 BEFORE THE NATIONAL LABOR RELATIONS BOARD  
 G ZAMBON TEXAS STATE TILE AND TERRAZZO INC  
 28 1966 10(K)  
 (16).

P-36E

BRICKLAYERS, MASONS AND PLASTERERS  
 INTERNATIONAL UNION OF AMERICA

1 November 1966

Mr. William J. Cour, Chairman  
 National Joint Board for Settlement  
 of Jurisdictional Disputes  
 815 Sixteenth Street, N. W.  
 Washington, D. C. 20006

Dear Mr. Cour:

This is in reply to your letter of October 28 (TEXAS 10/28/66) advising President Leonard has requested a job decision in the jurisdictional dispute between the Plasterers and the Bricklayers over the plumbing, rodding and squaring of walls which are to receive tile at the Houston University Science Building, Cullen Boulevard, Houston, Texas. Southwestern Construction Company, contractor; Texas State Tile and Terrazzo Company, subcontractor.

We have given our position in this matter in dozens of pieces of correspondence, and there has never been a change

in our position that the tilelayer should be accorded the right to prepare the walls for the setting of tile. This would include the application of the float coat which is a part of the so-called setting bed.

The agreement of August 22, 1917, relates to the preparation of walls, and at that time there was only one known method for the installation of tile, which was the conventional application of a coat that was to be scratched by the plasterer to guarantee adhesion of the final coat which was to be put on by the tilelayer to act as a bed for the tile.

We, once again, respectfully request the Joint Board render job decisions in accordance with the 1917 agreement, using the same language which specifically guarantees the tilelayer the right to apply the setting bed.

Yours very truly,

GEORGE KING

George King

*First Vice President*

GK:rd

P-36F

November 10, 1966

TEXAS 11/9/66

Edward J Leonard, General President  
Operative Plasterers' and Cement  
Masons International Association  
1125 Seventeenth Street N W  
Washington, D C 20036

Thomas Murphy, General President  
Bricklayers Masons and Plasterers  
International Union  
Bowen Building  
Washington, D C

Southwestern Construction Company  
Contractor  
P O Box 1204  
Houston, Texas 77001

Texas State Tile and Terrazzo Company  
Subcontractor  
3115 Golfcrest  
Houston, Texas

Gentlemen:

At its meeting November 9, 1966, the Joint Board considered the jurisdictional dispute between the Operative Plasterers' and Cement Masons International Association and the Bricklayers Masons and Plasterers International Union over the plumbing, rodding and squaring of walls which are to receive tile, Houston University Science Building, Houston, Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor.

The Joint Board voted to make the following job decision: The work in dispute is governed by the agreement of August 22, 1917, and shall be assigned to plasterers,

except that any coat to be applied wet the same day under tile shall be placed by tile setters. In the thin-set or adhesive method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar that is the scratch coat and plumb coat. The plasterers shall plumb, rod, and square all walls, rod and level all ceilings and the tile setter shall apply the final setting bed for his tile.

This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

WILLIAM J COUR  
*Chairman*

WJC/lma

cc: C J Haggerty—B&CT Dept  
Dale Witcraft—AGC

P-36G

**TELEGRAM**

LLG 012 (47) NSA004

SSJ680 NS HSA101 NL PD HOUSTON TEX 24

NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL  
DISPUTES BUILDING AND CONSTN INDUSTRIES 815 16 ST NW  
FONE ST36817

ATTN WILLIAM J COUR WASHDC

REFERENCE OUR WIRE NOV FIRST 1966 JOB REFERENCE  
ERRONEOUS WIRE SHOULD HAVE READ QUOTE REFERENCE M D  
ANDERSO LIBRARY UNIVERSITY OF HOUSTON YOUR LETTER OCT  
28, 1966 TO SOUTHWESTERN CONSTRUCTION COMPANY IN TEXAS  
STATE TILE AND TERRAZZO INC BE ADVISED WE ARE NOT  
STIPULATED WITH THE NATIONAL JOINT BOARD FOR  
SETTLEMENT OF JURISDICTIONAL DISPUTES BUILDING AND  
CONSTRUCTION INDUSTRY WE DESIRE TO MAKE THIS WORK  
ASSIGNMENT DISPUTE UNDER SECTION 10(K of TAFT ACT  
BEFORE THE NATIONAL RELATIONS LABOR BOARD TEXAS  
STATE TILE AND TERRAZZO INC 3115 GULFCREST BLVD HOUSTON.

P-36H

TELEGRAM

SHA033(09) CTA264

WGO94 WW RBA086 DL PD 2 EX FAX RB WASHINGTON DC 26 1156A  
EST

WM J COUR, CHAIRMAN, NATIONAL JOINT BOARD FOR  
SETTLEMENT OF JURISDICTIONAL DISPUTES

815 16TH ST NORTHWEST WASHDC

RE TEXAS 11/9/66—AT ITS MEETING NOVEMBER 9, 1966 THE  
JOINT BOARD CONSIDERED DISPUTE BETWEEN PLASTERERS  
AND BRICKLAYERS OVER PLUMBING, RODDING AND SQUARING  
OF WALLS WHICH ARE TO RECEIVE TILE ON HOUSTON  
UNIVERSITY SCIENCE BUILDING, CULLEN BOULEVARD, HOUSTON,  
TEXAS, SOUTHWESTERN CONSTRUCTION COMPANY CONTRACTOR,  
TEXAS STATE TILE AND TERRAZZO COMPANY, SUBCONTRACTOR.  
THE JOINT BOARD VOTED THAT THE WORK IN DISPUTE WAS  
THE WORK OF THE PLASTERERS. CONTRACTOR AND TILE  
SETTLERS REFUSE TO ABIDE BY THE DECISION. WE  
THEREFORE RESPECTFULLY REQUEST THAT YOU DIRECT THE  
CONTRACTOR AND THE B M & P I U TO ABIDE BY THE DECISION  
RENDERED BY THE NATIONAL JOINT BOARD ON NOVEMBER 9,  
1966

TELEGRAM  
[continued]

EDWARD J LEONARD GENERAL PRESIDENT, OP&CMIA  
11/9/66 9 1966 9 1966  
P&CMIA  
(20).

P-361

January 27, 1967

TEXAS 11/9/67

Thomas Murphy, General President  
Bricklayers, Masons and Plasterers  
International Union  
Bowen Building  
Washington, D C

Southwestern Construction Company  
Contractor  
P O Box 1204  
Houston, Texas 77001

Texas State Tile and Terrazzo Company  
Subcontractor  
3115 Golfcrest  
Houston, Texas

Gentlemen:

With further to our file Texas 11/9/66, the following telegram has been received from President Leonard:

"Re Texas 11/9/66—At its meeting November 9, 1966 the Joint Board considered dispute between Plasterers and Bricklayers over plumbing, rodding and squaring of walls which are to receive tile on Houston University Science Building, Cullen Boulevard, Houston Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor. The Joint Board voted that the work in dispute was the work of the Plasterers. Contractor and Tile Setters refuse to abide by the decision. We therefore respectfully request that you direct the contractor and the B M & P I U to abide by the decision rendered by the National Joint Board on November 9, 1966."

Contractor is directed to comply with the Joint Board job decision of November 9, 1966.

President Moreschi is requested to instruct the local union to comply with this Joint Board job decision.

Very truly yours,

WILLIAM J COUR  
Chairman

WJC/lma

cc: E J Leonard—Tile Setters  
D R Witcraft—AGC

P-36L

TELEGRAM

SHA028 (46)BB040  
NSA080 NS HSD029 D HOUSTON TEX 2 854ACST  
WILLIAM J COUR CHAIRMAN  
NATIONAL JOINT BOARD 815 16TH ST NORTHWEST WASHDC  
REGARDING TEXAS 11-9-67 TILE LAYERS LOCAL 20 CONTENTS  
WE ARE IN COMPLIANCE WITH RULING WHICH STATED THE  
FINAL FLOAT COAT WOULD BE WORK OF THE TILE LAYERS  
AND THIS IS ALL WE ARE DOING. THANK YOU VERY MUCH  
L D MCHARGUE SECRETARY  
11-9-67 20  
(18).

P-36O

TELEGRAM

SHA071 (56)CTA347  
WF299 WW RBB031 DL PD FAX RB WASHINGTON DC 9 1105A EST  
WM J COUR, CHMN NATL JOINT BOARD FOR SETTLEMENT OF  
JURISDICTIONAL DISPUTES  
815 16th ST NW WASHDC  
RE TEXAS 11/9/66 ON FEBRUARY 2, 1967 YOU SENT US A LETTER  
QUOTING A TELEGRAM YOU HAD RECEIVED FROM L D MCHARGUE  
WHO INDICATES THAT TILE LAYERS' LOCAL 20 CONTENTS THAT  
THEY ARE IN COMPLIANCE WITH THE DECISION RENDERED  
BY THE JOINT BOARD ON NOVEMBER 9, 1966 WHICH AWARDED  
THE PLUMBING, RODDING AND SQUARING OF WALLS WHICH ARE  
TO RECEIVE TILE ON THE HOUSTON UNIVERSITY SCIENCE  
BUILDING, HOUSTON TEXAS, TO THE PLASTERERS. THE  
CONTENTS OF THE TELEGRAM RECEIVED FROM SECRETARY



MCHARGUE ARE ERRONEOUS. AS OF THIS DATE WE WISH TO ADVISE YOU THAT THE CONTRACTOR AND TILE LAYERS LOCAL 20 ARE NOT ABIDING BY THE DECISION RENDERED ON NOVEMBER 9, 1966

TELEGRAM  
[Continued]

WE RESPECTFULLY REQUEST THAT SOUTHWESTERN CONSTRUCTION COMPANY CONTRACTOR, PO BOX 1204, HOUSTON TEXAS 77001, Texas State Tile and Terrazzo Company Subcontractor, 3115 Golfcrest, HOUSTON TEXAS AND TILE LAYERS LOCAL 20 BE DIRECTED TO IMMEDIATELY COMPLY WITH THE DECISION RENDERED NOVEMBER 9, 1966  
EDWARD J LEONARD GENERAL PRESIDENT OP&CMIA  
(20).

P-36P

February 10, 1967

TEXAS 11/966

Thomas Murphy General President  
Bricklayers, Masons and Plasterers  
International Union  
Bowen Building  
Washington D C

Southwestern Construction Company  
Contractor  
P O Box 1204  
Houston Texas 77001

Texas State Tile and Terrazzo Company  
Subcontractor  
3115 Golfcrest  
Houston Texas

Gentlemen:

With further reference to our file Texas 11/966, the following telegram has been received from President Leonard:

"Re Texas 11/966 on February 2, 1967 you sent us a letter quoting a telegram you had received from L D

McHargue who indicates that tile layers' local 20 contends that they are in compliance with the decision rendered by the Joint Board on November 9, 1966 which awarded the plumbing, rodding and squaring of walls which are to receive tile on the Houston University Science Building, Houston Texas, to the plasterers. The contents of the telegram received from Secretary McHargue are erroneous. As of this date we wish to advise you that the contractor and tile layers local 20 are not abiding by the decision rendered on November 9, 1966. We respectfully request that Southwestern Construction Co. contractor, Texas State Tile & Terrazzo Co. subcontractor, and tile layers local 20 be directed to immediately comply with the decision rendered November 9, 1966."

Contractor is again directed to comply with the Joint Board job decision of November 9, 1966.

President Murphy is again requested to instruct the local union to comply with this Joint Board job decision.

Very truly yours,

WILLIAM J COUR  
*Chairman*

WJC/mjk

cc: E Leonard—OPCMLA

D Witcraft—AGC

P-36Q

## WESTERN UNION

SENDING BLANK

CALL LETTERS GDS    Paid    CHARGE TO OP&CMIA    March 6, 1967  
 William J Cour, Chairman, National Joint Board for Settlement of  
 Jurisdictional Disputes  
 815 16th Street, Northwest Washington D C

With reference to File TEXAS 11/9/66, would appreciate the Joint Board clarifying its decision of November 9, 1966 regarding dispute between our members and the Bricklayers over plumbing, rodding and squaring of walls which are to receive tile on the Houston University Science Building, Houston Texas, Southwestern Construction Company Contractor, Texas State Tile and Terrazzo Company Subcontractor. Additional information regarding our request for clarification of this decision to follow.

Edward J Leonard, General President, O P & C M I A

EJL

P-36R

FCL NL

NATL JOINT BOARD MAR 6, 1967

BOOK TWO COPIES

SOUTHWESTERN CONSTRUCTION CO—CONTRACTOR  
 2929 RUSK AVENUE  
 HOUSTON TEXAS

TEXAS STATE TILE AND TERRAZZO COMPANY  
 SUBCONTRACTOR  
 3115 GOLFCREST  
 HOUSTON TEXAS

PRESIDENT LEONARD HAS REQUESTED CLARIFICATION OF JOINT BOARD JOB DECISION OF NOVEMBER 9, 1966 IN JURISDICTIONAL DISPUTE BETWEEN PLASTERERS AND BRICKLAYERS OVER PLUMBING, RODDING AND SQUARING OF WALLS WHICH ARE TO RECEIVE TILE, HOUSTON UNIVERSITY SCIENCE BUILDING JOB, HOUSTON TEXAS, SOUTHWESTERN CONSTRUCTION CO CONTRACTOR, TEXAS STATE, TILE AND TERRAZZO COMPANY SUBCONTRACTOR. THIS REQUEST FOR CLARIFICATION WILL BE CONSIDERED BY JOINT BOARD AT ITS MEETING MARCH 14, 1967.

WILLIAM J COUR CHAIRMAN NATIONAL JOINT BOARD  
 EIGHT FIFTEEN SIXTEENTH NORTHWEST

WCJ/lp

cc: E J LEONARD—OPCMIA  
 D B WITCRAFT—AGC

P-368

NATL JOINT BOARD MAR 6, 1967

THOMAS F MURPHY GENERAL PRESIDENT  
BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL  
UNION  
BOWEN BUILDING  
WASHINGTON D C

PRESIDENT LEONARD HAS REQUESTED CLARIFICATION OF  
JOINT BOARD JOB DECISION OF NOVEMBER 9, 1966 IN  
JURISDICTIONAL DISPUTE BETWEEN OPCMIA AND BMPIU OVER  
PLUMBING, RODDING AND SQUARING OF WALLS WHICH ARE TO  
RECEIVE TILE, HOUSTON UNIVERSITY SCIENCE BUILDING JOB,  
HOUSTON TEXAS, SOUTHWESTERN CONSTRUCTION COMPANY  
CONTRACTOR, TEXAS STATE TILE AND TERRAZZO COMPANY  
SUBCONTRACTOR.

THIS REQUEST FOR CLARIFICATION WILL BE CONSIDERED BY  
THE JOINT BOARD AT ITS MEETING OF MARCH 14, 1967.  
WILLIAM J COUR CHAIRMAN NATIONAL JOINT BOARD

WJC/ap

cc: E J LEONARD—OPERATIVE PLASTERERS & CEMENT MASONS  
INTERNATIONAL ASSOCIATION

P-36T

OPERATIVE PLASTERERS'  
AND CEMENT MASONS'

International Association of the United States and Canada

March 13, 1967

Mr. William J. Cour, Chairman  
National Joint Board for Settlement of  
Jurisdictional Disputes  
815 16th Street, N. W.  
Washington, D. C. 20006

Re: TEXAS 11-9-66

Operative Plasterers' and Cement Masons'  
International Association  
Bricklayers, Masons and Plasterers' International  
Union of America  
Southwestern Construction Company  
Texas State Tile and Terrazzo Company

Dear Mr. Cour:

Supplementing our telegram to you of March 6, 1967 requesting a clarification of the above captioned award, we submit the following information for consideration by the National Joint Board:

The OP & CMIA, on October 27, 1966, requested the National Joint Board to decide the jurisdictional dispute between the OP & CMIA and the Tile Setter members of the BM & PIU "over the plumbing, rodding and squaring of walls which are to receive tile on the Houston University Science Building" job. The Joint Board, on November 9, considered this dispute and the method in which walls were being prepared to receive tile and the installation of the tile and issued the following decision:

The Joint Board voted to make the following job decision: The work in dispute is governed by the agreement of August 22, 1917, and shall be assigned to plasterers, except that any coat to be applied wet the same day under tile shall be placed by tile set-

ters. In the thin-set or adhesive method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar; that is the scratch coat and plumb coat. The plasterers shall plumb, rod and square all walls, rod and level all ceilings and the tile setter shall apply the final setting bed for his tile.

There is no dispute over the first part of the award dealing with installation of tile applied wet the same day under tile, although under the 1917 Agreement and Decision of Record, which appear in the Green Book, the application of this coat would also be the work of the Plasterers. However, in the interest of efficiency, the Plasterers will abide by that portion of the Board's award. Clarification, however, is needed of that portion of the award concerning the "thin-set or adhesive" method of applying tile in view of the position taken by the B.M. & P.I.U. here. On this job, the Tile Setters refused to relinquish the application of the second coat of mortar on metal lath and the first coat of mortar on concrete block or clay tile to the Plasterers in accordance with the Joint Board's decision, despite the fact that these coats were being used to plumb, rod and square the walls preparatory to receiving tile to be installed in the thin-set or adhesive method; that is, the second coat of mortar on metal lath or the first coat of mortar on concrete block or clay tile was allowed to dry and the tile installed later by the use of a commercial Portland cement based mortar or mastic.

In view of the B.M. & P.I.U.'s refusal to abide by the award, we requested by telegram that the contractor and the B.M. & P.I.U. be directed to abide by the November 9 decision. On January 27, the contractors involved and the B.M. & P.I.U. were ordered by the Joint Board to comply with the decision of November 9.

On February 2, 1967, the O.P. & C.M.I.A. was informed by the Chairman of the Joint Board that Tile Layers Local

20 of the B.M. & P.I.U. had forwarded the following telegram to the Joint Board:

“Regarding Texas 11-9-66 Tile Layers Local 20 contends we are in compliance with ruling, which stated the final float coat would be work of the Tile Layers and this is all we are doing. Thank you very much.

L. D. McHargue, Secretary”

In other words, the Tile Setters are interpreting the last part of the Joint Board's award which says “the tile setter shall apply the final setting bed for his tile” to mean that they have been awarded the second coat of mortar on metal lath or the first coat of mortar on concrete block or clay tile even though it was only these coats of mortar which are in dispute and which the Joint Board awarded to the Plasterers since these coats are used to plumb, rod and square the walls. The Tile Setters in their telegram refer to the plumb coat as the “float coat” and infer that this coat is part of the setting bed. This distorted interpretation of the Joint Board's award has been utilized by the Tile Setters in many cases to excuse their refusal to comply with the awards of this Board and, therefore, it is time that this matter be clarified once and for all so there is no room for distortion.

The Tile Setters claim that the Plasterers are only entitled to the first or scratch coat of mortar on metal lath when tile is to be set in the thin-set or adhesive method, and are entitled to no work when tile is to be installed in a thin-set or adhesive method on concrete block or other firm foundation, even though in both cases a coat of mortar is to be installed to plumb, rod and square the walls prior to the installation of the tile. The Tile Setters argue that this plumb coat is their setting bed, which, under the Joint Board's award, they are entitled to do. It is quite clear, however, that this plumb coat is the work that has been consistently awarded to the Plasterers in this case and all prior Joint Board decisions.

In view of the position taken by the Tile Setters in this case, it is necessary that the Joint Board clarify its decision of November 9 to specifically define the term "final setting bed" in the thin-set or adhesive method of installing tile.

It is quite clear that the setting bed in the thin-set or adhesive method is the commercial Portland cement based mixtures such as TEC, L&M, etc., or the mastic type mixtures which are used to apply the tile over a previously prepared coat of mortar which is *dry*. The dry plumb coat of mortar cannot be called a setting bed—its purpose is not to bed tile to the wall but rather to make the wall plumb and square. After the plumb coat of mortar is applied, the Tile Setter may apply either a third coat of mortar over the dry plumb coat and bed his tile in it while still wet (the conventional method), or apply a thin coat of TEC or other commercially prepared thin setting material and set his tile in it (the thin-set method). In other words, the thin setting bed materials are substitutes for the Tile Setters' conventional mortar setting bed.

A suggested method of clarification may be to change the last sentence of Texas 11-9-66 to read:

"In the thin-set adhesive method of applying tile to walls and ceilings, the plasterer shall apply up to two coats of mortar (depending on the requirements of the job) to scratch and/or to plumb, rod and square the walls and level the ceilings. The tile setter shall apply the thin-set material or adhesive which shall be the setting bed for his tile."

We believe the above suggested clarification is reasonable and fair and is consistent with the intent of the Joint Board. We urge the Board to adopt it.

Very truly yours,

EJL  
lah

EDWARD J. LEONARD  
Edward J. Leonard  
General President



P-36U

March 15, 1967

Texas 11/9/66

Edward J. Leonard, General President  
 Operative Plasterers and Cement Masons  
 International Association  
 1125 Seventeenth Street N. W.  
 Washington, D. C. 20006

Thomas Murphy, General President  
 Bricklayers Masons and Plasterers International Union  
 Bowen Buliding  
 Washington, D. C. 20005

Southwestern Construction  
 Company  
 Contractor  
 P O Box 1204  
 Houston Texas 77001

Texas State Tile & Terrazzo  
 Co.  
 Subcontractor  
 3115 Gulferest Boulevard  
 Houston Texas

Gentlemen:

At its meeting March 14, 1967, the Joint Board considered President Leonard's request for clarification of its job decision of November 9, 1966 in the jurisdictional dispute between the Operative Plasterers and Cement Masons International Association and the Bricklayers Masons and Plasterers International Union over plumbing, rodding and squaring of walls which are to receive tile, Houston University Science Building job, Houston Texas, Southwestern Construction Company contractor, Texas State Tile & Terrazzo Co. subcontractor, and voted to clarify this job decision as follows.

The agreement of August 22, 1917 between the Operative Plasterers and Cement Masons International Association

and the Bricklayers Masons and Plasterers International Union and the decision of record of February 21, 1924 provides that the plumbing, rodding and squaring of all walls which are to receive tile shall be performed by plasterers. Plaster materials for this purpose are normally applied directly to the initial scratch coat. Where no scratch coat is required, such as in the case of clay tile or concrete block walls, the plaster materials are applied directly to such walls.

In the so-called conventional method of setting tile, an additional coat of plaster materials is applied to furnish a setting bed for tile, and there appears to be no dispute between the parties where this method is followed. The work involved in the Joint Board job decision of November 9, 1966 involved the so-called thin-set method for the major part of the work.

The Joint Board voted to clarify its job decision by stating that the coat of plaster material which is applied directly to the initial scratch coat or directly to clay tile or cement block walls is for the primary purpose of plumbing, rodding and squaring of walls to receive tile and, in accordance with the agreement of record and the decision of record referred to above, shall be assigned to plasterers.

The Joint Board, in recognition of the problems created by having two different trades working at the same time on separately identifiable work operations, further voted that if the tile to be adhered to the coat of plaster material applied to the initial scratch coat or directly to clay tile or cement block walls is set during the same work day in which such coat is applied the plaster materials shall be applied by tile setters in the interest of efficient job operation.

When the tile is not set during the same work day in which the plaster materials are applied to the initial scratch coat or directly to clay tile or cement block walls, the Joint Board voted that the application thereof is for

the primary purpose of plumbing, rodding and squaring the walls to receive tile and shall be assigned to plasterers in accordance with the agreement of record of August 22, 1917 and the decision of record of February 21, 1924.

This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

WILLIAM J. COUR  
Chairman

WJC/lp

cc: C. J. Haggerty—B&CT Dept.  
D. R. Witcraft—AGC

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**Texas State Exhibit 1**

**PROCEDURAL RULES AND REGULATIONS OF THE NATIONAL JOINT  
BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES  
BUILDING AND CONSTRUCTION INDUSTRY AND APPEALS  
BOARD PROCEDURES**

July 21, 1965

**PROCEDURAL RULES AND REGULATIONS OF THE  
NATIONAL JOINT BOARD**

These procedures shall apply to:

(a) Contractors who employ members of the organizations affiliated with the Building and Construction Trades Department, AFL-CIO, and who have signed a stipulation setting forth that they are willing to be bound by the terms of the agreement establishing the Joint Board, or who are members of a signatory association of contractors with authority to bind its members, or who are parties to a collective bargaining agreement providing for the settle-

ment of jurisdictional disputes under the procedures herein set forth. The stipulation form adopted by the Joint Board provides:

Date .....

"In signing this stipulation, the undersigned agrees to to be bound by the terms and provisions of the agreement effective May 1, 1948, as amended by agreement effective October 1, 1949, creating the National Joint Board for Settlement of Jurisdictional Disputes. In particular, the undersigned agrees to be bound by the provision of the agreement which states: 'any decision or interpretation by the Joint Board (or Hearings Panel) shall immediately be accepted and complied with by all parties signatory to this agreement.' This authorization shall run for the term of the agreement, and shall continue in effect for each year thereafter unless specifically terminated at the renewal date of said agreement which is March 31.

(Signed) ....."

(b) All unions affiliated with the Building and Construction Trades Department, AFL-CIO, in the building and construction industry.

\* \* \*

#### PROCEDURES USED BY THE JOINT BOARD:

\* \* \*

7. (a) In making a job decision the Joint Board shall utilize the following criteria: Decisions and agreements of record as set forth in the Green Book, valid agreements between affected International Unions attested by the Chairman of the Joint Board, established trade practice and prevailing practice in the locality.

\* \* \*

8. Each job decision of the Joint Board shall state that the job decision was predicated upon the particular facts

and evidence before the Joint Board regarding the dispute and shall be effective on the particular job only.

9. The affected Unions and contractors shall promptly comply with each job decision of the Joint Board.

10. In the event any contending International Organization feels that a decision rendered by the National Joint Board has been in error, it shall be privileged, within ten working days of receipt of the decision, either (a) to request reconsideration of a National Joint Board job decision upon submission of additional written evidence; or (b) to request an oral hearing on such decision by the National Joint Board, provided that the job decision has been accepted and put into effect by the affected parties, and further that such job decision remains in continuous effect until reconsidered or an oral hearing is held by the Joint Board. The Chairman shall determine the matter of compliance with the job decision in question and, if it is found to be in accordance with the job decision, shall set a date for such reconsideration or oral hearing. The contending International Unions shall be notified and given opportunity to present written evidence or be heard in the event of an oral hearing. It is permissible at oral hearings for the affected parties to present witnesses. Requests for postponement of an oral hearing must be received by the Joint Board a minimum of forty-eight hours prior to the date scheduled for the hearing.

\* \* \*

13. The Joint Board should not ignore the interests of the consumer in settling jurisdictional disputes but should give due regard to such factors as efficiency and economy of operation.

**Texas State Exhibit 2**  
**NATIONAL AGREEMENT**

By and Between the  
**TILE CONTRACTORS' ASSOCIATION OF AMERICA, INCORPORATED**  
 and the  
**BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL**  
**UNION OF AMERICA**

**AGREEMENT**

THIS AGREEMENT, renewed and entered into this nineteenth day of January, 1966, by and between the Tile Contractors' Association of America, Incorporated, Party of the First Part, and the Bricklayers, Masons and Plasterers' International Union of America, Party of the Second Part, shall become operative on January 20, 1966.

**ARTICLE I**

**WITNESSETH:**

That in consideration of this Agreement renewed this day, which is to remain in full force and effect until January 20, 1969, unless sooner abrogated by mutual consent of the parties hereto, do each for ourselves and every individual member of our respective organization pledge full compliance with all its terms.

**ARTICLE II**

Section 1. THIS AGREEMENT pertains to the setting, slabbing or installing of all classes of TILE, whether for interior or exterior purposes, in any public or private building anywhere within the territory of the United States or the Dominion of Canada.

Section 2. Tile Layers Work is defined as:

(a) The laying, cutting or setting of all tile where used for floors, walls, ceilings, walks, promenade roofs, exterior

vencers, stair treads, stair risers, facings, hearths, fireplaces and decorative inserts, together with any marble plinths, thresholds or window stools used in connection with any tile work; also to prepare and set all concrete, cement, brickwork or other foundations or material that may be required to properly set and complete such work.

(b) The application of a coat or coats of mortar, prepared to proper tolerance to receive tile on floors, walls and ceilings regardless of whether the mortar coat is wet or dry at the time the tile is applied to it.

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**Texas State Exhibit 4**

**Plan for Settling Jurisdictional Disputes  
Nationally and Locally**

**Approved by**

**The Building and Construction Trades  
Department, AFL-CIO**

**Agreements and Decisions Rendered Affecting the  
Building Industry**

**By the**

**American Federation of Labor**

**Building and Construction Trades Department, AFL-CIO**

**National Board of Jurisdictional Awards**

**National Referees John A. Lapp, Peter Eller,**

**Wm. L. Hutcheson and National Joint Board**

**April 1, 1965**

\* \* \* \* \*

**ARTICLE II**

\* \* \* \* \*

Sec. 4. It shall be the duty of the Joint Board to consider and decide cases of jurisdictional disputes in the building and construction industry, which disputes are referred to it by any of the International Unions involved in the dispute, or an employer directly affected by the

dispute on the work in which he is engaged or by a participating organization representing such employer.

\* \* \* \* \*

### ARTICLE III

Sec. 1. (a) In making a job decision the Joint Board shall utilize the following criteria: Decisions and agreements of record as set forth in the Green Book, valid agreements between affected International Unions attested by the Chairman of the Joint Board, established trade practice and prevailing practice in the locality.

(b) The Joint Board may at its discretion hold oral hearings on repetitive disputes for the purpose of rendering a decision applying in the locality as defined by the Board.

(c) All agreements and decisions recognized under the provisions of the Constitution of the Building and Construction Trades Department shall be considered as constituting the record.

(d) Any job decision or ruling rendered by the Joint Board under paragraph (b) of this section may be appealed to a Hearings Panel by any of the participating National or International Unions involved or may be referred to a Hearings Panel for a national decision by action of the Joint Board. Any decision rendered by such a Hearings Panel shall immediately become part of the record referred to in paragraph (c) of this section.

(e) In jurisdictional dispute cases where International Unions, members of the Building and Construction Trades Department, AFL-CIO, and participating or stipulated employer national associations, do not have direct representation on the Board hearing a specific case, they may designate a representative to participate in the discussion of such case.

(f) The Joint Board should not ignore the interests of the consumer in settling jurisdictional disputes, but should



give due regard to such factors as efficiency and economy of operation.

•   •   •   •   •   •   •   •

### AGREEMENT

(Preparation of Walls and Ceilings to Receive Tile)

Agreement entered into this 22nd day of August, 1917, between the B. M. & P. I. U. and the O. P. & C. F. I. A. pertaining to the preparing or plastering of walls and ceilings which are to receive tile;

First. It is agreed that the plasterers of the O. P. & C. F. I. A. and the B., M. & P. I. U. shall prepare or plaster all walls which are to receive tile. They shall plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat which shall be put on by the Tilelayer to act as a bed for his tile.

Second. It is further agreed that the Plasterers of either the O. P. & C. F. I. A. or the B., M. & P. I. U. shall prepare or plaster all ceilings which are to receive tile. All ceilings must be leveled and rodded and properly scratched so as to guarantee adhesiveness of the final coat which shall be applied by the Tile Setter and act as a bed for his tile.

Third. It is further agreed that the Plasterers shall use only sand and cement in the preparation of work above stipulated unless otherwise specified by the architect.

Fourth. Any member of either organization that violates the above rules shall, upon conviction, be fined the sum of \$25.00.

•   •   •   •   •   •   •   •

Decisions Rendered by the National Board for  
Jurisdictional Awards in the Building Industry.

•   •   •   •   •   •   •   •

**Plastering Work for Preparation of Walls and  
Ceilings for Tiling**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the Operative Plasterers and Cement Finishers' International Association.)

Decision Rendered February 21, 1924

\* \* \* \* \*

After reviewing the controversy in its various phases, the determination is reached that the agreement previously existing between the two organizations affords the most practical plan of adjustment, and the following award is therefore made as the decision of the Board:

Plasterers shall prepare or plaster all walls and ceilings which are to receive tile, except the final setting bed, which shall be applied by the Tile Layers; the bath rooms, vestibule and small halls in single private residences shall be plastered by the Tile Setters.

**Texas State Exhibit 7**

MARTINI

TILE AND TERRAZZO COMPANY  
INCORPORATED

1902 Taft Street                      Phone JA 6-3769  
Houston, Texas 77006

SPECIFICATIONS

Rainbo Baking Co.  
4104 Leeland  
Houston, Texas

System for installing wall tile over masonry, one-coat method.

Metal lath applied over masonry.

Tile setting bed (sand/cement) applied over metal lath.

Bond coat applied over setting bed or to back of tiles, and tile bonded to this coat and grouted.

**Texas State Exhibit 12**

**MARTINI TILE AND TERRAZZO CO., INC.**

**Stock Requisition**

**Job No. 6849-T**

**Date 3-9-67**

**Name Rainbo Bakery**

**Arch. None**

**Job Address 4104 Leeland**

**Mr. Stephenson—Engr.**

• • • • •

Apply Metal Lath Over Masonry Wall & Setting Bed Over Lath. Hold Sand/Cement Setting Bed As Tight Or Close As Possible. Install Tile Over Neat Coat Of L&M.

**Texas State Exhibit 13**

**AGREEMENT**

**By and Between**

**TILE, TERRAZZO AND MARBLE CONTRACTORS OF HOUSTON, TEXAS  
and**

**THE BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL  
UNION OF AMERICA, LOCAL UNION #20 OF HOUSTON,  
TEXAS, REPRESENTING TILE SETTERS, TERRAZZO  
WORKERS AND MARBLE SETTERS.**

• • • • •

**ARTICLE II.**

The work of Tile, Marble and Terrazzo Mechanics shall be all work recognized as per the National Agreements of the National Tile Contractors Association of America, Inc., National Terrazzo & Mosaic Association, National Association of Marble Dealers and Bricklayers, Mason and Plasterers' International Union of America.

• • • • •

## ARTICLE VIII.

The Wage Schedule as follows:

	<u>Hourly Rates</u>		
	<u>Jan. 1, 1967</u>	<u>Jan. 1, 1968</u>	<u>Jan. 1, 1969</u>
Journeyman	\$4.50	\$4.75	\$5.00
Foreman	4.70	4.95	5.20
<u>Apprentices</u>			
First Six Months	3.00	3.20	3.40
Second Six Months	3.10	3.30	3.50
Third Six Months	3.20	3.40	3.60
Fourth Six Months	3.30	3.50	3.70
Fifth Six Months	3.40	3.60	3.80
Sixth Six Months	3.60	3.80	4.00

Above rates will be in effect until June 30, 1969, or until changed by mutual agreement.

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**Texas State Exhibit 14**

**Plasterers Local Union No. 79**

**AGREEMENT ENTERED INTO  
BY and BETWEEN**

The Contractors' Lathing and Plastering Association of Houston, Texas, Inc., a trade association composed of lathing and plastering contractors, hereinafter the "Contractors", and the Plasterers Local Union No. 79 O.P.C. M.I.A. of Houston, Texas hereinafter called the "Union".

**ARTICLE I**

**Recognition**

The Union is recognized as bargaining agent for all Plasterers and Plasterer Apprentices whom it lawfully represents, who may be employed by Contractors in the area covered by the present Jurisdiction of the Union. The Jurisdiction being the following counties in the State

of Texas: Austin, Angelina, Brazoria, Brazos, Burleson, Colorado, Fort Bend, Harris, Lavaca, Calhoun, Dewitt, Victoria, Goliad, Jackson, Matagorda, Grimes, Houston, Leon, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, Waller, Washington, and Wharton.

## ARTICLE II

Section 1. Effective July 1, 1965, the hourly rate shall be:

Plasterer Foreman .....	\$4.60
Plasterer Journeyman .....	\$4.35

Effective July 1, 1966 the hourly rate shall be:

Plasterer Foreman .....	\$4.775
Plasterer Journeyman .....	\$4.525

Effective July 1, 1967 the hourly rate shall be:

Plasterer Foreman .....	\$4.925
Plasterer Journeyman .....	\$4.675

### Texas State Exhibit 20

### CONSTITUTION

Operative Plasterers' and Cement Masons' International  
Association  
of the United States and Canada

• • • • •

### Plasterers' Jurisdiction

Sec. 118. (a) All interior or exterior plastering of cement, stucco, stone imitation or any patent material when cast, the setting of same, also corner beads when stuck must be done by practical Plasterers of the O.P. & C.M.I.A. This includes the plastering and finishing with hot composition material in vats, compartments or wherever applied; also the taping and pointing of all joints, nailholes and bruises on wallboard, regardless of the type of materials or tools used; also the setting in place of

plasterboards, ground blocks, patent dots, cork plates, brownstone, and acoustical tile including temporary nailing, cutting and fitting in connection with the sticking of same. All acoustic blocks when stuck with any plastic materials, regardless of thickness, shall be the work of the Plasterer only. Also the sticking, nailing and screwing of all composition caps and ornaments. The preparing, scratching and browning of all ceilings and walls when finished with terrazzo, or tile shall be done by Plasterers of this Association, allowing sufficient thickness to allow the applying of the terrazzo or tile and the application of any plastic material to the same must be done by members of the O.P. & C.M.I.A. who are practical Plasterers.

(b) Practical Plasterers are men who are proficient in the use of the hawk and trowel and other implements or tools of the trade.

Local Unions shall have autonomy governing the mixing of all materials but shall not deviate from manufacturers standards or the specifications of the American Standards Association.

**General Counsel's Exhibit 6**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-THREE

Case No. 23-CD-133

PLASTERERS LOCAL UNION No. 79, OPERATIVE PLASTERERS AND  
CEMENT MASONS INTERNATIONAL ASSOCIATION OF  
HOUSTON, TEXAS

and

SOUTHWESTERN CONSTRUCTION COMPANY

Case No. 23-CD-137

PLASTERERS LOCAL UNION No. 79, OPERATIVE PLASTERERS AND  
CEMENT MASONS INTERNATIONAL ASSOCIATION OF  
HOUSTON, TEXAS

and

MARTINI TILE AND TERRAZZO COMPANY

**STIPULATION**

1. That the work in dispute in both cases is that described in the Decision and Determination of the Disputes reported at 167 NLRB No. 23, and the record of the 10(k) proceeding itself.

2. (a) That Texas State Tile and Terrazzo, Inc., (Texas State) assigned the work on the M. D. Anderson Library job (Library job) in dispute to its employees who are members of or represented by Tile, Terrazzo and Marble Setters Local Union No. 20 (Tile Setters).

2. (b) That Martini Tile and Terrazzo Company (Martini) assigned the work in dispute on the Rainbo Baking Company job (Rainbo) to its employees who are members of or represented by the Tile Setters.

3. That Respondent claimed the work in No. 1 and No. 2 above at all times material herein.

4. That on January 24, 1967, Respondent established a picket at the Library job, the legend of which reads:

Plasterers Local 79 protest the refusal of Texas State Tile and Terrazzo to comply with National Joint Board. Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or concerted refusal to work.

5. That the picket described in No. 4 above remained at the Library job until February 10, 1967, at which time the picketing ceased in compliance with an injunction issued on such date by the United States District Court for the Southern District of Texas, Houston Division.

6. That on March 17, 1967, Respondent placed a picket at the Rainbo job, the legend of which read:

"Plasterers Local No. 79 protests substandard conditions Martini Tile Co., Inc., Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or a concerted refusal to work."

7. That during the period of the picketing the Rainbo job described in paragraph 6 above, certain crafts did not work.

8. Respondent's object in posting the picket line described in No. 6 above, was to force a change in the assignment of the work in dispute on the Rainbo job which was being installed by the employees of Martini who were members of or represented by the Tile Setters to employees who are members of or represented by the Plasterers.

9. On August 22, 1967, the Board issued, at 167 NLRB No. 23, its decision and Determination of Disputes in the 10(k) proceeding involving Cases Nos. 23-CD-133 and



23-CD-137 whereby it awarded the work in dispute, to employees of Texas Tile and Martini who are represented by the Tile Setters.

10. At no time following the issuance of the Board's Decision and Determination of Disputes on August 22, 1967, has Respondent given written notification to the Regional Director for Region 23 whether it would refrain from forcing or requiring Texas Tile and/or Martini by means proscribed in Section 8(b)(4)(D) to assign the work in dispute to Plasterers rather than tile setters.

RICHARD J. LINTON  
Richard J. Linton  
*Counsel for the General  
Counsel*

DONALD J. CAPUANO  
Donald J. Capuano  
*Attorney for Respondent*

---

LESLIE THACKER  
*Attorney for the Tile Setters,  
Tile Setters Helpers, Texas  
State and Martini*

KENNETH R. CARR  
Kenneth R. Carr  
*Attorney for Southwestern  
Construction Company*

**Excerpts From Transcript Before Hearing Examiner**

[1] BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-Third Region

Case No. 23-CD-133

In the Matter of:

PLASTERERS LOCAL UNION No. 79, OPERATIVE PLASTERERS AND  
CEMENT MASONS INTERNATIONAL ASSOCIATION OF HOUSTON,  
TEXAS

-and-

SOUTHWESTERN CONSTRUCTION COMPANY

Case No. 23-CD-137

PLASTERERS LOCAL UNION No. 79, OPERATIVE PLASTERERS AND  
CEMENT MASONS INTERNATIONAL ASSOCIATION OF HOUSTON,  
TEXAS

-and-

MARTINI TILE AND TERRAZZO COMPANY

7620 Federal Office Building,  
515 Rusk Avenue,  
Houston, Texas,  
Monday, October 30, 1967.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock, a. m.

Before:

GORDON J. MYATT, Esq., Trial Examiner.

Appearances:

RICHARD J. LINTON, Esq.,  
6617 Federal Office Building,  
515 Rusk Avenue, Houston, Texas  
77002, appearing as counsel for the  
General Counsel.

[2] FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI,  
By: KENNETH R. CARR, Esq.,  
Bank of the Southwest Building, Houston, Texas,  
appearing on behalf of Southwestern Construction  
Company, Charging Party.

LESLIE THACKER, Esq.,  
2711 Woodhead Street, Houston, Texas, appearing  
on behalf of Martini Tile and Terrazzo Company,  
Charging Party.

O'DONOGHUE & O'DONOGHUE,  
By: DONALD J. CAPUANO, Esq.,  
1912 Sunderland Place, N. W., Washington, D. C.,  
appearing on behalf of Plasterers Local Union No.  
79, Operative Plasterers and Cement Masons In-  
ternational Association of Houston, Texas, Re-  
spondent.

• • • • •  
[14] Trial Examiner: Any thing further, Mr. General  
Counsel?

Mr. Linton: Your Honor, at this time I would move that  
the exhibits which have been introduced constitute the  
entire record in this case, and that a hearing before the  
Trial Examiner, further hearing, be waived, and that the  
entire record be submitted directly to the Board for the  
issuance of findings of fact, conclusions of law and a de-  
cision, and that such matters, the findings of fact, conclu-  
sions of law by the Trial Examiner, and the issuance of a  
Trial Examiner's Decision, be waived.

• • • • •  
[15] Trial Examiner: Mr. Capuano?

Mr. Capuano: I am in agreement that the case should  
be transferred to the Board. May I make a comment about  
what Miss Thacker said?

Trial Examiner: Yes.

• • • • •

[17] Trial Examiner: As I view this matter, I am not prepared to honor your request to stay this proceeding. This proceeding is confined to whether or not there has been an unfair labor practice committed and also, as I see it, whether or not there has been compliance with the Board's award. Your motion goes to the scope of the Board's award in an effort to enlarge it, as I understand it. And therefore, I feel at this point that this proceeding should not be stayed.

I also think there is some merit in what Mr. Capuano has indicated, that this matter, itself, should be before the Board inasmuch as your motion to open the 10(k) is before the Board for decision. So I do not feel that you would be prejudiced in any way. And for these reasons I am going to deny your request to stay this proceeding.

And in keeping with that I will grant the request to transfer the entire record of this case to the Board, all parties waiving a Trial Examiner's findings of fact, conclusions of law and a decision in this case, and requesting that the Board make the findings of fact and conclusions of [18] law and issue its decision herein.

That being the case, unless there is anything more anybody wants to bring out, we can conclude this hearing.

\* \* \* \* \*

BRIEF OF PETITIONER, PLASTERERS LOCAL UNION  
NO. 79

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328

IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**Case No. 22073**

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PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS'  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION,  
AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

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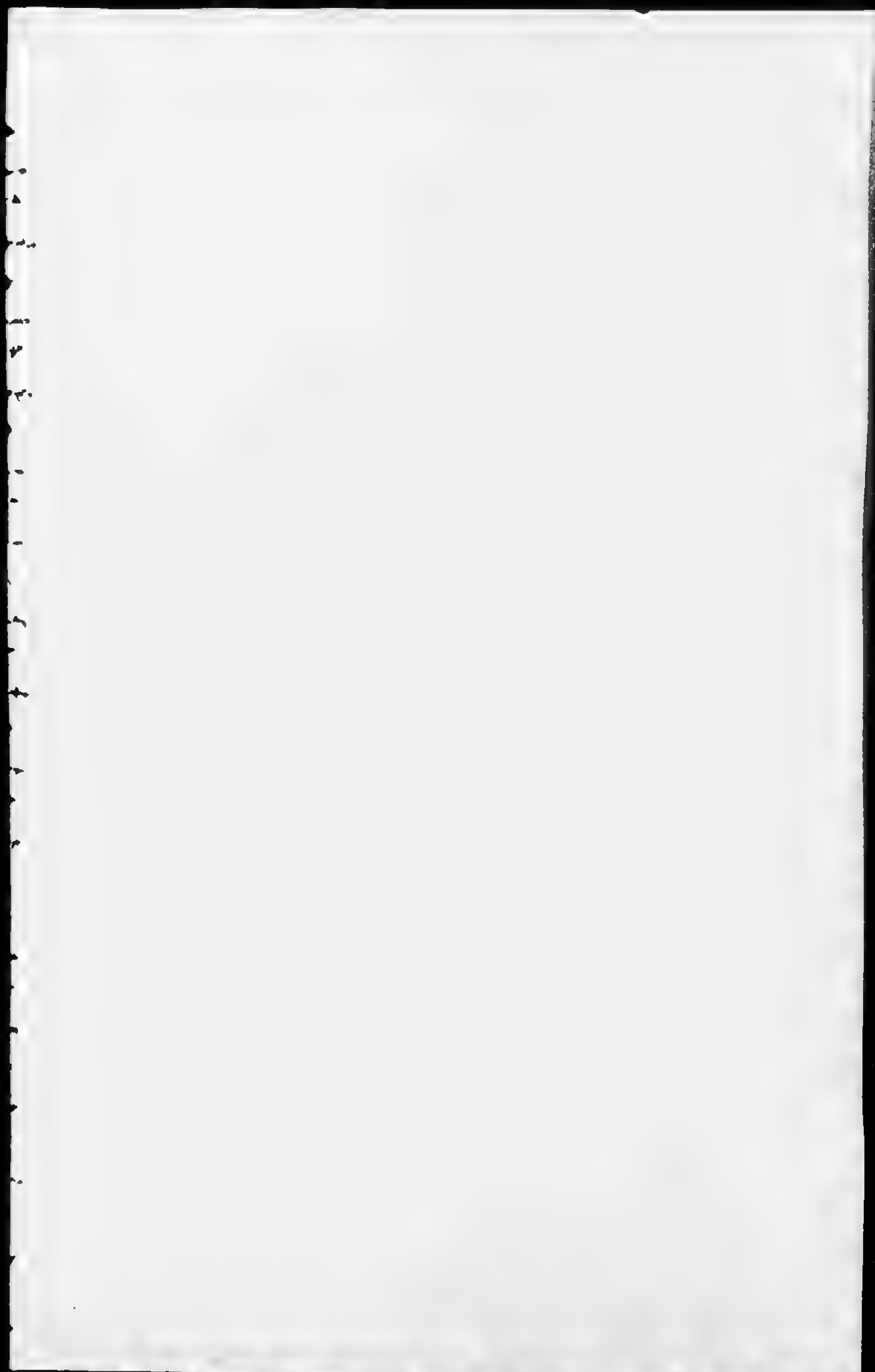
On Petition for Review and Cross-Petition for Enforcement  
of an Order of the National Labor Relations Board

---

MARTIN F. O'DONOGHUE  
DONALD J. CAPUANO  
1912 Sunderland Place, N. W.  
Washington, D. C. 20036  
*Counsel for Petitioner,  
Plasterers Local Union No. 79*

January 31, 1969





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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Case No. 22073

---

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS'  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION,  
AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

---

On Petition for Review and Cross-Petition for Enforcement  
of an Order of the National Labor Relations Board

---

BRIEF OF PETITIONER, PLASTERERS LOCAL UNION  
NO. 79

---

**STATEMENT OF ISSUES**

The issues in this case, as contained in the prehearing conference stipulation, are as follows:

1. Whether substantial evidence on the whole record supports the Board's finding that Plasterers Local Union No. 79 picketed the M. D. Anderson Library job with an object of forcing or requiring Texas Tile to change the assignment of the disputed work from its own employees, who were members of or represented by Tile Setters Local No.

20, to employees who were members of or represented by Plasterers Local Union No. 79.

2. Whether the Board's determination in the Section 10(k) proceeding that employees represented by Tile Setters Local No. 20 are entitled to the disputed work is valid and proper.

3. Whether the Board properly found that the employer controlling the work assignment, as well as rival unions, must approve and enter into a voluntary adjustment procedure in order to preclude a Board hearing and determination pursuant to Section 10(k) of the Act.

This case has not previously been before the Court under this title or any similar title.

## **STATEMENT OF THE CASE**

### **A. NATURE OF THE CASE AND COURSE OF PROCEEDINGS**

This case involves a jurisdictional dispute between Plasterers Local Union No. 79, Operative Plasterers' and Cement Masons' International Association (hereinafter "Plasterers"), and Tile, Terrazzo and Marble Setters Local Union No. 20 of the Bricklayers, Masons and Plasterers International Union (hereinafter "Tile Setters"), over the application to walls of a coat of Portland cement mortar preparatory to a coat of "dry-set mortar" being applied, in which tile was to be installed. The coat of mortar in dispute was used to plumb, rod and square the walls, that is, make them straight and level.

Both the Plasterers and Tile Setters<sup>1</sup> claim the work of applying the plumb coat of mortar. The disputed work was assigned to the Tile Setters on the two jobs in question. The Plasterers do not claim the application of the coat of dry-set mortar or the tile. That is the work of the Tile Setters.

---

<sup>1</sup> For convenience, "Plasterers" and "Tile Setters" will refer to the respective unions and the employees they represent.

The case was initiated by the filing of charges under Section 8(b)(4)(i)(ii)(D) of the Act<sup>2</sup> by Southwestern Construction Company in Case No. 23-CD-133, and by Martini Tile & Terrazzo Company (hereinafter "Martini") in Case No. 23-CD-137. The charges, filed in February, 1967 and March, 1967 respectively, alleged that the Plasterers were attempting to force Texas State Tile & Terrazzo Company (hereinafter "Texas State") (Case No.

### REFERENCES TO RULINGS

The Board's Decision and Determination of Dispute under Section 10(k) of the Act was issued on August 22, 1967, is reported at 167 NLRB No. 23 and is found at page 11 of the Appendix. The Board's Decision and Order in the Section 8(b)(4)(D) unfair labor practice phase of the case was issued on June 27, 1968, is reported at 172 NLRB No. 77 and is found at page 1 of the Appendix.

Setters claimed that the award was not clear and refused to comply with it. The award was clarified on March 15, 1967 (A. 424-426), again awarding the work in dispute to the Plasterers. The Tile Setters and Texas State refused to comply with the award (A. 56).

The Martini dispute occurred on March 17, 1967. In view of the failure of the Tile Setters to comply with the Joint Board award and clarification on the Texas State job, the Martini dispute was not submitted to the Joint Board. Martini claimed it was not bound by the Joint Board, and would not comply with its decisions (A. 57).

The Board consolidated these two cases and held a hearing under Section 10(k) of the Act in April, 1967. There-

<sup>2</sup> National Labor Relations Act, as amended, (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151 *et seq.*) (hereinafter the "Act").

<sup>3</sup> References to the Appendix shall be designated ("A. —").

after the Board issued its "Decision and Determination of Disputes,"<sup>4</sup> finding that the Tile Setters working for Texas State and Martini were entitled to apply the plumb coat of mortar on the walls. The Plasterers refused to comply with this Decision and thereafter a Section 8(b)(4)(i)(ii)(D) complaint was issued against the Plasterers.

A hearing was held before a Trial Examiner and at that time, the parties stipulated that the record in the unfair labor practice proceeding would consist of the complete record of the Section 10(k) hearing, and the parties also waived findings of fact, conclusions of law and a Decision of the Trial Examiner. The case was transferred directly to the Board for the issuance of a Decision and Order.

Thereafter, on June 27, 1968, a three-member panel of the Board issued its "Decision and Order,"<sup>5</sup> affirming its prior Decision in the 10(k) proceeding and finding that the Plasterers unlawfully picketed the Texas State job and the Martini job in an attempt to force those employers to assign the work in dispute to Plasterers rather than the Tile Setters. The Section 10(k) Decision and the Section 8(b)(4)(i)(ii)(D) Decision and Order are now both before this Court for review.<sup>6</sup>

## B. STATEMENT OF FACTS

### 1. Anderson Library Job of Texas State

In 1966, Texas State was awarded a subcontract by Southwestern Construction Company to do the tile work on the Anderson Library at the University of Houston (A. 4; 38). The contract covered the preparation of walls

<sup>4</sup> 167 NLRB No. 23 (A. 11-23).

<sup>5</sup> 172 NLRB No. 77 (A. 1-11).

<sup>6</sup> "Since there is no independent review of § 10(k) work assignments, the only stage at which the [union] can contest the work award is on review of the § 8(b)(4)(i)(ii)(D) unfair labor practice order. If the § 10(k) order falls, the unfair labor practice order falls with it" *NLRB v. Local 991, ILA*, 332 F.2d 66 (5th Cir., 1964).



and the installation of tile in four stairwells and two large restrooms on each floor of the eight-story building (A. 38, 39, 150).

Texas State does not employ Plasterers but does have a collective bargaining agreement with the Tile Setters and assigned the work in dispute to the Tile Setters. There was a plastering contractor on the job, Tobin & Rooney, who employed Plasterers pursuant to his collective bargaining agreement with the Plasterers.

The rough walls upon which tile would be the finished surface were partly concrete and partly metal studding covered by metal lath (A. 39, 49-51). On the metal studding walls, metal lath was put on the walls by Lathers, and a scratch coat of cement mortar was applied to the lath by Plasterers employed by Tobin & Rooney. The scratch coat is applied very thin and is used to stiffen the lath. The scratch coat does not straighten the wall (A. 291). The Tile Setters then applied a plumb coat of cement mortar over the scratch coat. The Tile Setters also applied a plumb coat of mortar directly to the concrete walls to plumb, rod and square them. The application of the plumb coat in both situations is the work in dispute.

The plumb coat of mortar was allowed to *dry* on both types of walls and then a coat of dry-set mortar was applied by the Tile Setters and the tile set in it. CREST, a commercial dry-set mortar which is mixed with Portland cement and water and troweled on the wall, was used here<sup>7</sup> (A. 151).

After determining that the Tile Setters were applying the plumb coat of mortar directly to the concrete walls and over the scratch coat on the metal studding walls, the Plasterers requested, without success, the assignment of this work from Texas State (A. 42, 43, 54). The Plas-

---

<sup>7</sup> Twenty-five pounds of the dry-set mortar are mixed with ninety-four pounds of Portland cement (A. 151).

terers then submitted the dispute to the Joint Board and, as pointed out earlier, the Joint Board issued a decision and clarification which clearly and unequivocally awarded the work in dispute to the Plasterers. Texas State and the Tile Setters refused to comply with the decision, precipitating picketing of the job by the Plasterers.

## 2. The Rainbo Bakery Job of Martini

On the Rainbo Bakery job there was no general contractor, Martini having a direct contract with the owner. This was a remodeling job and Martini's contract called for the tiling of two walls in one area of the bakery (A. 109). Martini does not employ Plasterers either, but has a collective bargaining agreement with the Tile Setters.

On this job, the Tile Setters installed metal lath directly to the painted masonry walls in the bakery (this work is normally the work of the Lathers), and then put on a coat of cement mortar varying in thickness to plumb the walls, that is, make them straight and level.<sup>8</sup> The mortar coat was allowed to *dry* and then tile was installed by the Tile Setters in a bed or coat of dry-set mortar called L&M.<sup>9</sup> This is another brand of dry-set mortar concentrate which is mixed with Portland cement, exactly as was done on the Anderson Library job by Texas State (A. 108-110).

The work in dispute here is the application of the plumb coat of mortar installed by Martini's Tile Setters and

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<sup>8</sup> Metal lath was nailed to painted masonry walls at the Rainbo Bakery because the mortar would not adhere to the paint (A. 58). If they were not painted, the plumb coat of mortar could have been applied, just like it was applied to the concrete walls at the Anderson Library.

<sup>9</sup> Purported specifications for the job were introduced and stipulated to by counsel for the Plasterers on the representation of counsel for Martini that they were the specifications for the Rainbo Bakery job (A. 433, 68). It later developed on cross-examination of Martini's superintendent that there were no specifications on that job—he simply took his orders from Rainbo's engineer (A. 107, 108). Mr. Martini then admitted on cross-examination that the purported specifications were in fact only prepared for the 10(k) proceeding about two weeks prior to the date of the hearing (A. 141).

allowed to dry prior to the installation of the tile in the setting bed of L&M. Again, there is no issue concerning the installation of the metal lath, the application of the coat of L&M, or the installation of the tile.

### C. THE METHOD OF PREPARING WALLS TO RECEIVE TILE

#### 1. The Conventional Method

To properly understand this dispute and the position of the parties, it is necessary to understand the methods of preparing walls to receive tile, and the innovations in the tile industry.<sup>10</sup> At one time, the typical installation of tile consisted of the application of three coats of mortar over studding and metal lath with the tile being bedded in the third coat. This is the conventional method (A. 52, 62). The first two coats (counting from the metal lath) are the work of the Plasterers and the third coat, or setting bed, is the work of the Tile Setter. There is no dispute about this (A. 52, 53).

On a wall constructed of metal or wood studs covered with metal lath (A. 389, P. Ex. 34A), the Plasterer would first apply a thin "scratch" coat of mortar (A. 390, P. Ex. 34B) to the lath to stiffen it and give a solid backing (A. 391, P. Ex. 34C) for the application of the second coat of mortar, which is called the "plumb" coat, "brown" coat or "leveling" coat (A. 291).

The purpose of the second coat is to plumb and straighten the wall, that is, the room would be squared and screeds (strips of wood or mortar) would be applied to the now

<sup>10</sup> The Plasterers introduced into evidence a series of photographs showing the procedure for preparing walls to receive tile and the installation of tile in the conventional method and the thin set method (to be described *infra*). We suggest these photographs, reviewed in conjunction with the above description, present a clear understanding of the work in dispute (A. 389-403). These pictures are particularly valuable because they were not controverted in any way by the Tile Setters or Employers and, in fact, they did not even cross-examine the witness through whom they were introduced, about the pictures.

dry scratch-coated wall by the Plasterers, plumb and level (A. 392-395, P. Ex. 34D-G). The space between the screeds would be filled in with mortar (A. 396, 397, P. Ex. 34H, I) and then the mortar rodded off the plumbed screeds, leaving a straight, plumb and level surface (A. 291-293, 398, P. Ex. 34J). The thickness of the plumb coat would vary depending on how crooked the rough partition wall was. It could vary in spots from  $\frac{1}{8}$ " to  $1\frac{1}{2}$ " or more.

The procedure outlined above for the plumb coat of mortar is the same procedure used by the Tile Setters in putting the plumb coat of mortar on the Anderson Library and Rainbo jobs, although the Tile Setters call the plumb coat a "float coat" (A. 100, 153, 154). Even the mixture of materials for the second or plumb coat in the conventional method is identical with the mixture of the coat of mortar in dispute on the two jobs. This consists of Portland cement, sand and water. The tools to apply it are identical and the method of application identical (A. 100, 249, 250, 292, 293).

The second coat, as well as the scratch coat, in the conventional method is normally scratched, that is, lines put in with a scarifier to make a good bond (A. 291, 293, 391, 399, P. Ex. 34C, 34K). All recognized standard specifications provide that the second coat applied by the Plasterers must be plumb and true (A. 315, 317, 331, 332, 383). After the second coat has dried, the Tile Setters would put screeds on the wall to maintain the plumbness that had already been achieved by the brown coat applied by the Plasterers (A. 294, 400, P. Ex. 34L). The Tile Setters would then apply their setting bed of mortar between the screeds (A. 401, P. Ex. 34M) and install the tile in the setting bed (A. 83, 402, P. Ex. 34N). The mortar setting bed is usually of a uniform thickness of  $\frac{3}{8}$ ",  $\frac{1}{2}$ " or  $\frac{3}{4}$ ". Before the tile can be set, it has to be soaked in water for at least a half hour (A. 324, 85, 116, 136, 145).

The Tile Setters would apply only as much setting bed to the wall as they could cover with tile while the setting bed

remained plastic or wet to insure proper adhesion (A. 324, 345). Immediately prior to setting the tile in the plastic setting bed, they would apply a very thin layer of pure Portland cement and water (called neat cement) to the setting bed or the back of the tile and then set the tile in the setting bed (A. 311, 325).

If the walls to which the tile is to be applied are masonry or concrete, as in both the Library and Rainbo jobs, then in the conventional method the scratch coat would be unnecessary because the backing is already solid. In this situation, the Plasterers would apply the brown coat or plumb coat directly to the masonry walls in the same manner as if the walls were made of studding and had a scratch coat on them. The Tile Setters would apply the tile setting bed on the plumb coat after the latter had dried (A. 50, 51). The Tile would be installed in the same manner as stated above.

## **2. The Thin Setting Bed Method**

In approximately 1956 or 1957, a great innovation took place in the tile industry. A new method of installing tile was inaugurated with the discovery by the Tile Council of America of dry-set Portland cement mortars (A. 346). This method, called the thin setting bed method, allows the tile contractor to set his tiles in a much thinner setting bed than with the conventional method and the bed has greater strength (A. 346, 360).

In addition to the above advantages, this new method became popular because it saves the tile contractor time and money. Tiles no longer have to be soaked as they did in the conventional method (A. 339, 346, 360) and it is not necessary to apply a neat cement layer on top of the thin setting bed. (A. 339) Furthermore, tile can be applied over almost any plumb smooth surface with the dry-set mortars, such as concrete block, gypsum plaster, sheetrock and, of course, Portland cement plaster (A. 361, 362).

If the walls which are to have tile on the finished surface are rough, *e.g.*, concrete, then a plumb coat of Portland cement plaster is put over the walls by the Plasterers to make them plumb and smooth. After that coat has dried, a  $\frac{1}{8}$ " thin setting bed of dry-set mortar, such as the CREST used on the Library job or the L&M used on the Rainbo job, is applied by the Tile Setters to that surface and dry tile set in it. (A. 338, 339, 349, 362). Of course, if the rough walls are made of metal or wood studs, then metal lath and a scratch coat of Portland cement plaster would be applied under the plumb coat by the Plasterer. (A. 341)

This is the method that was used at the Library and Rainbo jobs and as is obvious, the only real distinction between this method and the conventional method is that the Tile Setters' old thick mortar setting bed (with its requirements of soaked tile and neat cement) has been eliminated and replaced by a thin setting bed of L&M, CREST, TEC or one of many brand name dry-set mortars. The rough walls, however, must still be plumb and level and, therefore, the plumb coat of the Plasterers is still necessary.

The photographs introduced by the Plasterers clearly show that the dry-set mortars simply take the place of the conventional mortar setting bed installed by the Tile Setters. Plasterers Exhibit 34M (A. 401) shows the conventional tile setting bed on the Plasterers' plumb coat and Plasterers Exhibit 34N (A. 402) shows tile being installed in the conventional setting bed, whereas Plasterers Exhibit 34O (A. 403) shows a setting bed of dry-set mortar and tile installed in it. These pictures show that the wall still has to be plumb and it is agreed that in the conventional method, this is the work of the Plasterers in accordance with the Agreement of 1917 and Decision of 1924, which will be discussed *infra* at page 39 (A. 432, 433, 75, 76, 297, 298).

Furthermore, the dry-set materials are practically the same as those used by the Tile Setters in the conventional setting bed, except that special chemicals are now added

to slow the rate of water absorption. Portland cement is mixed with the CREST or L&M concentrate and even sand can be added to the mixture to apply the dry-set mortar in a thicker coat (A. 112, 338, 357). Because of the chemical additives, however, the dry-set mortar need only be applied in a coat about  $\frac{1}{8}$ " thick, whereas the conventional setting bed would be  $\frac{3}{8}$ "  $\frac{1}{2}$ " or  $\frac{3}{4}$ " thick (A. 346, 360).

The installation at the Anderson Library and the Rainbo Bakery were done in this thin setting bed method despite what the Tile Setters claim, and the plumb coat of mortar under the coat of L&M or CREST should have been assigned to the Plasterers. While the Tile Setters may use another name such as "float coat" to describe the type of installation, the fact remains that the work tasks involved and the functions of the various coats are identical to the thin setting bed method described here.

### 3. The Basis of the Plasterers' Claim

The basis of the Plasterers' claim to the work on the Anderson Library and the Rainbo Bakery jobs is that the plumb coats of mortar applied by the Tile Setters which were allowed to *dry* before the tile was installed with dry-set mortar had as their only purpose the plumbing, rodding and squaring of the walls to receive tile. Concerning the walls in the Library Mr. Zambon, the President of Texas State, testified: "The purpose [of the mortar coat] was to put a nice plumb, straight and square wall, and then to install the tile the next day with either—with the new methods we have, whether you call it L&M or CREST or whatever it was." (A. 154)

Therefore, under the 1917 Agreement between the Plasterers and Tile Setters and the 1924 Decision in the Green Book<sup>11</sup> (A. 432, 433), as applied by the Joint Board in its

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<sup>11</sup> *Plan For Settling Jurisdictional Disputes Nationally and Locally* (commonly called the "Green Book") (A. 430). This "bible" of the construction industry contains, *inter alia*, "Agreements and Decisions rendered affecting the Building Industry."



decisions of November 10, 1966 and March 15, 1967 (A. 313, 424-426), the installation of the plumb coat of mortar is the work of the Plasterers. The CREST and L&M which were applied over the dry plumb coats of mortar on the Library and Bakery are the setting beds and the work of the Tile Setters, as provided in the Agreement and Decision.

The 1917 Agreement and the 1924 Decision set forth *functions* that the Plasterers are to perform in preparing walls to receive tile. The Agreement and Decision provide that the Plasterers are to plumb, rod and square the walls and scratch them if necessary. They say nothing about the number of coats that must be applied, nor are the Plasterers limited to any particular method. The Agreement and Decision do, however, limit the Tile Setters to the final coat which shall be their setting bed.

If the tile was actually installed in the plumb coat of mortar the *same day* that coat was installed, then the Plasterers would not claim the mortar coat because it is really serving as a combination conventional setting bed and plumb coat in that situation. Although the plumbing would still be the Plasterers' work, in the interest of efficiency and economy no claim is made for the work in that case (A. 16).

This has been the consistent position of the Plasterers and the Joint Board award supports it (A. 424-426). Furthermore, it is consistent with the Guide Specifications issued jointly by the Texas Ceramic Tile Contractors' Association and the Texas Lathing and Plastering Association (A. 381-384).<sup>12</sup>

The Agreement and Decision are the underlying basis for each craft's jurisdiction and are recognized as such by both crafts. The Joint Board interpreted and applied these basic jurisdictional documents to the new innovation in the tile industry—dry-set mortar. The Plasterers accept

<sup>12</sup> See discussion *infra*, pp. 42-45.



the Joint Board clarification of March 15, 1967, as a fair and reasonable distribution of the work.

Furthermore, the Joint Board action in awarding the disputed work to the Plasterers is consistent with the procedures established by the American Standards Association, in its "Standard Specification for Installing Tile with Dry-Set Portland Cement," which states that the dry-set "mortar bed to be a minimum of 1/16"" (A. 339). It then provides in the same specification that the *Plasterers* are to "apply brown [plumb] coat behind tile of correct thickness to allow for tile and setting bed" of dry-set mortar (A. 341). L&M Tile Products, the manufacturer of the dry-set used on the Rainbo job, in its "Architectural Manual" and guide specification for installing tile with dry-set mortars, states that the plumb or brown coat behind the thin-bed dry-set mortar shall be done by the Plasterers (A. 354).

Finally, the Guide Specification issued by the Contractors Associations in 1961 state that the brown or plumb coat of Portland cement mortar shall be installed by the Plasterer "to receive 1/8-inch thickness of *Dry-Set Mortar* setting bed by Tile Contractor." (A. 382) (Emphasis added).

As will be explained more fully later in the Brief, this evidence favoring an assignment to the Plasterers is supported by the other criteria considered by the Board, such as area practice, skills, efficiency, etc.

#### SUMMARY OF ARGUMENT

Section 10(k) of the Act requires the Board to quash the notice of hearing when it finds that the "parties" to a jurisdictional dispute have adjusted the dispute or agreed upon methods for the voluntary adjustment of the dispute. The Board has interpreted the word "parties" to mean the employer and the two disputing unions must agree upon the voluntary adjustment procedures.

It is the Plasterers' contention that the word "parties" means only the two disputing unions or employee groups

and this is supported by the language of the Section, the legislative history, and recent Supreme Court cases. Since here the two unions did agree upon a voluntary method of adjustment, the Joint Board, the notice of 10(k) hearing should have been quashed by the Board.

It is also the contention of the Plasterers on the merits of the actual dispute, that the Board failed to exercise independent judgment in its determination of this dispute as required by the Supreme Court and in fact simply followed its now discredited policy of affirming the employers' assignments. This is demonstrated by a statistical analysis of the Board's decisions compared with the statistics of the Joint Board. This is also demonstrated by the inconsistent approach the Board has taken regarding various criteria it uses in determining jurisdictional disputes.

The last contention of the Plasterers is that the Board, in an effort to support the employers' assignments, ignored extensive evidence which favored an assignment to the Plasterers, erroneously interpreted other evidence, failed to give the proper weight to certain factors, and on the whole, failed to exercise its responsibility under Section 10(k) as the Supreme Court has directed.

### **ARGUMENT**

#### **I. SECTION 10(k) DOES NOT REQUIRE THE EMPLOYER TO BE A PARTY TO A VOLUNTARY METHOD OF ADJUSTMENT**

One of the main issues involved in this case was stipulated to be:

"Whether the Board properly found that the employer controlling the work assignment, as well as the rival unions, must approve and enter into a voluntary adjustment procedure in order to preclude a Board hearing and determination pursuant to Section 10(k) of the Act."

Section 10(k) of the Act provides:

"Whenever it is charged that any person has engaged in an unfair labor practice within the meaning

of paragraph (4)(D) of Section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen unless, within ten days after notice that such charge has been filed, the *parties* to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the *parties* to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed." (Emphasis added.)

Before the Board the Plasterers contended the "parties" to the instant disputes, that is, the Plasterers and the Tile Setters, have agreed upon a voluntary method of adjustment of the disputes (the Joint Board), and therefore the notice of the 10(k) hearing should have been quashed by the Board.<sup>13</sup> The basic premise on which this argument rests is that the word "parties," as used in Section 10(k), does not mean the *employer and the two unions* or groups of employees claiming the work in dispute must agree upon the voluntary adjustment of the dispute, but only that the two unions or groups of employees agree upon such a method.

Both unions involved are affiliated with International Unions that are members of the Building and Construction Trades Department of the AFL-CIO (hereinafter "BTD"), and it was stipulated that both unions are bound to the settlement procedure of the Joint Board (A. 178, 179; See also A. 405 (BTD Const., Article X)). It has long been recognized that the Joint Board is a voluntary method of settlement as contemplated within Section 10

<sup>13</sup> If the 10(k) notice should have been quashed by the Board, then the § 8(b)(4)(D) unfair labor practice order predicated on an invalid 10(k) decision cannot be enforced. *NLEB v. Radio & Television Broadcast Eng. Union, Local 1212 (CBS)*, 364 U.S. 573 (1961); *NLEB v. Int'l. Longshoremen's Warehousemen's Union*, 378 F. 2d 125, (9th Cir. 1967) and *NLEB v. Local 991, Int'l. Longshoremen's Assn.*, 332 F. 2d 66 (5th Cir., 1964).

(k) and that the affiliates of the BTD and their local unions are bound to the Joint Board. *Local 2, Wood, Wire & Metal Lathers Union (Acoustical Contractors Assn. of Cleveland)*, 119 NLRB 1345 (1958) and *Local 9, Wood, Wire & Metal Lathers Union (A.W. Lee, Inc.)*, 113 NLRB 947 (1955). Therefore, if as the Plasterers contend, "parties" means only the unions involved in these disputes, there is an established voluntary method of settlement and the notice of hearing should be quashed.

The Board, in both its 10(k) Decision and the 8(b)(4) (D) Decision, rejected this interpretation of § 10(k) without extensive discussion, simply holding that "the employer controlling the work assignment as well as the rival unions involved comprise the 'parties to such dispute,' and all must approve and enter into a voluntary adjustment procedure in order to preclude a hearing and determination pursuant to that Section," 172 NLRB No. 77 (Slip. op. 5) (A. 6).

Certainly a literal reading of Section 10(k) does not support the Board's interpretation; in fact, it supports the contrary view. The "dispute" involved, the Supreme Court said in *CBS, supra*, "is a dispute between two or more groups of employees over which is entitled to do certain work for an employer." 364 U.S. 573, 579. See *NLRB v. United Ass'n. etc., Local 420*, 242 F.2d 722 (3rd Cir., 1957) and *NLRB v. Radio & Television Broadcast Eng. Union Local 1212 (CBS)*, 272 F.2d 713 (2nd Cir. 1959). Obviously then, the "parties to such dispute" necessarily mean the two unions or employee groups involved, but not the employer.

This view is further supported by the last sentence of Section 10(k) which provides that the charge will be dismissed if the parties comply with the Board's decision or the voluntary body's decision. Since compliance will bring about a dismissal of the 8(b)(4)(D) charge, and since this charge can only be filed against unions, it seems clear

that the "parties" referred to there necessarily mean the unions.

In *CBS, supra*, the Supreme Court certainly construed "parties" as used in § 10(k) to mean only the disputing unions, not the unions and the employer. In discussing the provisions of 10(k), the Court stated:

"§ 10(k) offers strong inducements to quarrelling unions to settle their differences by directing dismissal of unfair labor practice charges upon voluntary adjustment of jurisdictional disputes." 364 U.S. at 577.

The Court then pointed out that in the case before it, the Board was required to determine the dispute because the "respondent [Broadcast Engineers Union] failed to reach a voluntary agreement with the stage employees union . . ." 364 U.S. at 577. No mention was made of the employer being a participant in the voluntary agreement and it is manifest the Court did not consider him a necessary "party" to any voluntary agreement under 10(k).<sup>14</sup>

#### **A. The Legislative History of Section 10(k) Supports the Interpretation Urged Here**

The Supreme Court in *CBS* reviewed the legislative history of 10(k) which demonstrated beyond question that the Board was wrong in holding that 10(k) did not require it to make affirmative awards as to which group of disputing employees was entitled to the work in issue. We submit the legislative history shows that the Board's interpretation of "parties" in 10(k) is also wrong and cannot be reconciled with the intent of Congress.

To begin with, the legislators, when considering the methods proposed for controlling jurisdictional disputes,

<sup>14</sup> In *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 265 (1964), the Court reiterated the congressional policy favoring voluntary settlements in Section 10(k). The Court then referred to remarks of Senator Murray in the Senate. He explained that 10(k) would allow the parties, that is, the "labor organizations to set up appropriate machinery for the settlement of such controversies within their own ranks." II Leg. Hist. 1046.

were agreed that such disputes were solely between two unions, or two groups of employees, over which should do a particular work task. See II Legislative History of the Labor Management Relations Act, 1947, 1012 (Senator Taft), (hereinafter "Leg. Hist."). "A jurisdictional dispute is one growing out of a dispute between two or more representatives of employees" I Leg. Hist. 583, (Rep. Landis); see also II Leg. Hist. 1056 (Sen. Ellender) and I Leg. Hist. 615 (Rep. Hartley). The House Report on H.R. 3020<sup>15</sup> states:

"Jurisdictional strikes usually involve quarrels, not between employers and employees, but between rival unions, which use the strike weapon against each other . . . ." H. Rep. No. 245 on H.R. 3020 (I Leg. Hist. 292, 315).

Since Congress was proceeding on the correct premise that a jurisdictional dispute was one between two unions or employee groups, naturally when it provided for a voluntary method of settlement of such disputes it did not contemplate employer participation.

#### 1. The Background of Section 10(k)

President Truman, in his State of the Union Message in January, 1947, requested Congress to adopt labor legislation including provisions to settle jurisdictional disputes. In this connection he stated:

"Another form of interunion disagreement is the jurisdictional strike involving the question of which labor union is entitled to perform a particular task. When rival unions are unable to settle such disputes themselves, provision must be made for peaceful and binding determination of the issues." (Cong. Rec. 1363 Jan. 6, 1947).

Complying with this request, Congress then proceeded to fashion appropriate legislation to settle these disputes

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<sup>15</sup> The labor-management bill introduced by Rep. Hartley in the House. I Leg. Hist. 31.

and restrict jurisdictional strikes. The bill initially passed by the House (H.R. 3020) had a provision making jurisdictional strikes unlawful, but contained no procedure for settling jurisdictional disputes (I Leg. Hist. 78 and see H. Rep. No. 245 on H.R. 3020, I Leg. Hist. 292, 314).

In the Senate, however, this deficiency was recognized by Senator Morse, who introduced a bill (S. 858) which *inter alia*, made it an unfair labor practice to engage in a jurisdictional strike but also provided, in language almost identical to that in the present § 10(k), a means of settling the actual disputes. Senator Morse proposed that the Board hear and determine jurisdictional disputes itself or appoint an arbitrator to do so if the two unions involved could not agree on a method of adjustment. His 10(k) provision was included in the bill reported by the Committee on Labor and Public Welfare (S. 1126, I Leg. Hist. 32) and remained intact in the final version as originally passed by the Senate (H.R. 3020, I Leg. Hist. 258).<sup>16</sup>

In Conference, the authority of the Board to appoint an arbitrator to hear disputes was deleted from Section 10(k) without explanation, but the remainder of Senator Morse's provision was retained (See H. Conf. Rep. No. 510, on H.R. 3020, I Leg. Hist. 505, 534, 561). The Conference bill then passed both Houses.

It is clear from Senator Morse's statements in support of his proposed Section 10(k) that the provision for voluntary settlement of jurisdictional disputes was meant to include only the disputing unions or groups of employees—not the employer. The idea for 10(k) developed from the Senator's experience with jurisdictional disputes while a member of the War Labor Board. He explained that in one particular dispute that came before that body, he proposed that unless the men went back to work the

<sup>16</sup> The provisions of S. 1126, as amended, were substituted for the provisions of H.R. 3020 which then passed the Senate (II Leg. Hist. 1468, 1522).



War Labor Board would appoint an arbitrator whose decision would be final and binding in the dispute. Labor objected but the unions ordered the men back to work. The War Labor Board thereafter adopted his resolution which became its policy, and provided that the War Labor Board would:

“ . . . . give *union leaders involved* in jurisdictional disputes 24 hours to proceed to settle the dispute without a work stoppage, and upon their failure to do so we would appoint an arbitrator whose decision would be final and binding.” II Leg. Hist. 983. (Emphasis added).<sup>17</sup>

Here was the genesis of Section 10(k). Senator Morse wanted the Act to provide the same incentive used by the War Labor Board to encourage disputing unions to agree between themselves on voluntary methods of settlement of jurisdictional disputes—the Board and arbitrators to be alternatives in the event the unions could not settle their differences. Senator Morse crystallized the meaning of the voluntary settlement procedures of Section 10(k) when he explained his reasons for opposing the Conference bill which did not contain his provision for the appointment of arbitrators in Section 10(k). He stated:

“It certainly is true, I am perfectly willing to confess it, Mr. President, that I propose in my bill, and I now defend, a procedure which in the last analysis says to labor, ‘If you cannot settle a jurisdictional

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<sup>17</sup> Senator Morse added:

“I think it ought to be frankly stated here this afternoon that probably one of the greatest benefits that will come from the adoption of such amendments to the Wagner Act as I am proposing this afternoon will be action on the part of the unions themselves to see to it that it does not become necessary, unless in exceptional cases, to resort to the machinery which I have proposed in these amendments . . . . [T]he unions themselves will proceed to establish within their own organizations machinery capable of settling such disputes short of economic action. If that will be the effect of the amendment, it certainly will be more than justified.” II Leg. Hist. 983.



dispute between the two unions involved without strike action then you must submit that issue to compulsory arbitration'." (II Leg. Hist. 1554).

Senator Murray, in urging the adoption of Section 10(k) as proposed by Senator Morse, explained his understanding of the provision as follows:

"We believe this provision of the bill to be sound, and are pleased to note that full opportunity is given the parties to reach a voluntary accommodation without governmental intervention if they so desire. *We are confident that the mere threat of governmental action will have a beneficial effect in stimulating labor organizations to set up appropriate machinery for the settlement of such controversies within their own ranks, where they properly should be settled.*" (Emphasis added) II Leg. Hist. 1046; see also Sen. Min. Rep. No. 105 on S. 1126; I Leg. Hist. 463, 480.

Considering this background, it is easily seen why both the proponents and opponents of the 1947 amendments understood that the "parties" to a jurisdictional dispute were the disputing unions, and no mention was made of employer participation in private settlement machinery. See *e.g.*, II Leg. Hist. 950, 1554 (Senator Morse); II Leg. Hist. 1157 (Senator Smith); II Leg. Hist. 995 (Senator Lucas); and I Leg. Hist. 615 (Rep. Hartley).

We submit that a review of the legislative history of Section 10(k) leaves no doubt that Congress never intended the employer to be a necessary party to the voluntary settlement machinery in Section 10(k) and therefore, when the disputing unions or groups of employees have agreed between themselves for the private settlement of the dispute, the notice of the 10(k) hearing should be quashed.

#### **B. The Joint Board**

There are no procedural problems involved with the Plasterers' contention because as already seen, the unions involved are bound to the Joint Board by their affiliation

with the Building and Construction Trades Department, regardless of whether the employer is bound (R. 848, P.Ex. 35, Art. X). Of course, employers may and do submit cases to the Joint Board and participate in its proceedings, but even if the employer controlling a work assignment does not elect to participate, the Joint Board proceeds to hear and determine the case between the two affiliated unions involved, based upon the Constitution of the BTB and its own rules (A. 302, 405, 426, 427, 430). This policy of the Joint Board is long standing, see *Local 450, Int'l. Union of Operating Eng'rs. (Slone Industrial Painters)*, 119 NLRB 1725 (1958), and of course, is supported by the fact that the Joint Board heard and decided the dispute on the Texas State job in question here (P.Ex. 3; T.Ex. 8).<sup>18</sup>

The Board, for many years, has followed a policy of quashing the notice of 10(k) hearing if it found that the disputing unions and the employer were stipulated to the Joint Board, *Local 943, United Brotherhood of Carpenters (Manhattan Const. Co.)*, 96 NLRB 1045 (1951), and see *United Brotherhood of Carpenters (O. R. Karst)*, 139 NLRB 591 (1962). Under the theory urged here, the policy would simply continue except that it would apply even though the employer was not a part of the private settlement proceeding. Obviously, this interpretation would strengthen private settlement bodies, such as the Joint Board, since all BTB affiliated unions are bound by its decisions. Of course, the Plasterers' position does not foreclose an employer's participation in the private settlement proceedings; it is simply that the employer's partici-

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<sup>18</sup> The Building and Construction Trades Department, AFL-CIO, is simultaneously filing a brief as amicus curiae in support of the statutory interpretation of 10(k) as urged by the Plasterers in this first argument. That brief covers the composition and operation of the Joint Board as well as the policy considerations supporting the interpretation of "parties" in 10(k) to mean the disputing unions or employee groups only. To avoid repetition these matters will not be covered herein.

pation or non-participation is not controlling if the disputing unions are bound by the private adjustment machinery.

It is interesting to note that while the Board insists the employer be a party to the voluntary adjustment of the dispute, it does not require his participation in its own 10(k) proceeding despite the fact that one is a substitute for the other. In *Local 1, Bricklayers, Masons and Plasterers Int'l. Union (Consolidated Engineering Co.)*, 141 NLRB 119, (1963), the employer who controlled the work assignments refused to participate in the 10(k) hearing, but the Board held his presence not necessary and assumed his assignment was affirmative evidence of his choice between the competing unions. By analogy this reasoning is equally applicable to the Joint Board if the employer refused to participate.

The issue raised here has recently been analyzed by the special joint "Committee On The Building and Construction Industry" of the American Bar Association. The Report of that Committee found that the Board's interpretation of the word "parties" in 10(k) was not supported by logic, the literal language or the legislative history of Section 10(k). The Report stated:

"By the term 'parties' those legislators who discussed the matter indicated that Congress means the disputing unions themselves. Nowhere in the legislative history is there any indication that Congress sought to require employer participation in this agreed upon method of adjustment of the dispute..." Report, *ABA Section of Labor Relations Law*, pp. 452, 456, 457 (1965).

Another commentator has flatly stated:

"The NLRB is incorrect in presently requiring that the employer be a party to an agreement procedure before it satisfies the standards necessary to avoid a Section 10(k) hearing. Thus, if two unions by membership in the Building Trades Department are bound

to accept the decisions of the Joint Board, this should be sufficient to dispense with the section 10(k) hearing; . . .” Sussman, *Section 10(k): Mandate For Change?*, 1967 B.U. L.Rev. 201, 229.

The interpretation urged here, it is submitted, would comply fully with the Congressional objectives of settling jurisdictional disputes, encouraging voluntary methods of settlement and protecting employers from jurisdictional strikes. Since both disputing unions had agreed upon a voluntary method of adjustment, the notice of hearing should have been quashed.<sup>19</sup>

### C. Analysis of the Board Cases

The Board, it must be conceded, in many cases both prior and subsequent to *CBS*, has held that it will not quash a notice of hearing and dismiss the 8(b)(4)(D) charge on the basis that the parties have agreed to a voluntary adjustment of the dispute unless the *employer* has agreed as well as the two unions. A review of the Board's cases, however, does not uncover the basis for this interpretation of “parties” as used in 10(k) although recently in *Local 300, United Ass'n etc. (D'Annunzio Bros. Inc.)*, 155 NLRB 836, 839 (1965), the Board claimed its position on this issue is grounded upon early decisions. In view of this, before considering *D'Annunzio*, it would be appropriate to briefly summarize the Board law.

Actually one of the earliest Board cases supports the Plasterers' position on the definition of “parties.” In *Local 16, ILA (Juneau Spruce Corp.)*, 82 NLRB 650 (1949), one of the first cases in which Sections 8(b)(4)(D)

<sup>19</sup> The Martini dispute, as previously pointed out, was not submitted to the Joint Board. This does not alter the fact, however, that there was an “agreed upon method for the voluntary adjustment of the dispute”—the Joint Board—and the Notice of Hearing in both disputes should have been quashed. Even if the voluntary procedure does not result in a decision, the Board may not hold a 10(k) hearing. *Local 2, Wood, Wire & Metal Lathers Int'l Union (Acoustical Contractors Ass'n. of Cleveland)*, 119 NLRB 1345, 1351.

and 10(k) were interpreted, the Board held that jurisdictional disputes were to be processed through Section 10(k) first and based its reasoning partly on the fact that "the opportunity [is] afforded *the rival unions* to reach a settlement or to agree upon methods for reaching an adjustment of the dispute; . . ." 82 NLRB at 655-56 (emphasis added). Clearly in *Juneau Spruce*, "parties" was interpreted to mean the rival unions only.

The Board began to back away from the *Juneau Spruce* interpretation without explanation in *Local 943, United Brotherhood of Carpenters (Manhattan Const. Co.)*, 96 NLRB 1045 (1951). There the beginning of the Board's present interpretation first appeared. The employer and the two unions were stipulated to the Joint Board, so the Board quashed the notice of hearing. Of course, since the employer was bound, the issue presented in the instant case was not before the Board in *Manhattan*, but that case became one of the major supports upon which the Board later held that the employer is a necessary "party" to any voluntary settlement procedure. See *Local 231, Int'l. Hod Carriers (Middle States Telephone Co.)*, 91 NLRB 598 (1950), *Local 581 United Brotherhood of Carpenters (Ora Collard)*, 98 NLRB 346 (1952); and *Local 17, Int'l. Union of Operating Eng'rs. (Empire State Painting and Waterproofing Co.)*, 99 NLRB 1481 (1952) (Joint Board not a voluntary method of settlement because employer was not stipulated). The definition of "parties" was not discussed in any of these cases.

It was not until 1954, in *Local 428, United Association etc.*, 108 NLRB 186 (1954), that the Board stated the employer must be bound to the Joint Board as well as the unions: "There are, however, other parties to these disputes, e.g., the employer against whom the pressure for reassignment is exerted." *Id.* at 197. The Board then held that "pursuant to clear Board precedent" (citing *Ora Collard* and *Empire State Painting and Waterproofing Co.*, *supra*), it was not precluded from hearing the dispute. *Id.* at 197.

Finally, this line of cases, although never really coming to grips with the issue of "parties", was the basis for the Board's pronouncement in *Local 450, Int'l Union of Operating Engineers (Sline Industrial Painters)*, 119 NLRB 1725 (1958) that:

"This Board has, therefore, held that where all parties to a dispute, that is the disputing unions and the employer responsible for the assignment of the disputed work, are bound by the agreement which established the Joint Board and which provides for the submission of disputes to it, the parties have 'agreed upon methods for the voluntary adjustment of the dispute' within the meaning of Section 10(k), . . . ." 119 NLRB at 1731 (Citing *United Brotherhood of Carpenters (Manhattan Construction Co.)*, 96 NLRB 1045 (1951)).

Since CBS, the Board has continued to adhere to its prior position. See *Int'l Union of Operating Engineers (Badolato & Sons)*, 135 NLRB 1392 (1962).

It is submitted that nowhere in the long line of cases highlighted above did the Board explain why the employer must be a party to the voluntary method of settlement, why it reversed the interpretation of *Juneau Spruce, supra*, or what legislative history supported its interpretation. As pointed out above, the literal meaning of Section 10(k) does not require employer participation. In fact, the statement in *Local 428, United Ass'n, supra*, that "there are other parties to these disputes", meaning the employer, is directly contrary to the definition of a jurisdictional dispute as recognized by Congress, the Supreme Court and the Board itself.<sup>20</sup>

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<sup>20</sup> In *Local 328, Wood, Wire & Metal Lathers Int'l Union (Acoustics & Specialties, Inc.)* 139 NLRB 598, 601 (1962), the Board held "Sections 8(b)(4)(D) and 10(k) were designed to resolve competing claims between rival groups of employees, . . ." See *New York Mailers Union No. 6, I.T.U. (New York Times Co.)*, 137 NLRB 665 (1962) (a jurisdictional dispute is a dispute between two unions).

### 1. The D'Annunzio Case

It was not until 1965 in *D'Annunzio Bros., Inc.*,<sup>21</sup> that the Board, faced with the same argument made here, briefly discussed the meaning of "parties". Actually, the Board's "reasoning" in rejecting the argument was simply that it had refused to adopt the disputing union's definition of "parties" in *Lodge 68, I.A.M. (Moore Drydock Co.)*, 81 NLRB 1108 (1949), and it had followed that decision consistently.

*Moore Drydock* did not present the issue raised here nor, contrary to the Board, did Member Houston's dissent in *Moore Drydock* reach the definition of "parties" as it concerns a voluntary adjustment proceeding. That case did not even involve a defense based on a voluntary adjustment of the dispute.

Actually, one month after *Moore Drydock* was decided, the Board in *Juneau Spruce, supra*, relied upon *Moore Drydock* in holding that Sections 8(b)(4)(D) and 10(k) must be read together and, under Section 10(k), the *rival unions* are given the opportunity to settle or agree upon methods of settling their dispute. Certainly what the Board in *D'Annunzio* says it held in *Moore Drydock* is not consistent with the interpretation of *Moore Drydock* as applied in *Juneau Spruce*. The very most that can be said for the Board's position, whether grounded on *Moore Drydock, supra*, or not, is that it has consistently misinterpreted the statute.

The Board in *D'Annunzio* also relied on the argument that Congress, in the 1959 amendments to the Act, did not see fit to disturb the Board's long-standing interpretation of the word "parties" in Section 10(k). We may point out that a similar argument was utilized by the Board before the Supreme Court in *CBS* in defense of its then long-standing policy of affirming employer's assignments

<sup>21</sup> *Local 300, United Ass'n (D'Annunzio Bros., Inc.)*, 155 NLRB 836, 839 (1965).



in the absence of a Board certification, order or a contract. The Court summarily rejected the argument.<sup>23</sup> It should have no greater weight here where the same section of the Act is involved.

**2. The Board, Sub Silentio, Has Applied the Interpretation of "Parties" as Urged by the Plasterers**

Although the Board in *D'Annunzio*, *supra*, and in the instant case claims it has consistently required the employer to be part of any voluntary settlement before it will quash the notice of hearing in a 10(k) proceeding, in three recent cases it has quashed the notice of hearing where only the disputing unions were parties to the voluntary settlement.

In *Local 1905, Carpet, Linoleum & Soft Tile Layers (Butcher & Sweeney Const. Co.)*, 143 NLRB 251 (1963), the union representing the employees performing the work in dispute stated it was bound by an inter-union agreement with the charged union which awarded the work to the latter and it intended to abide by that agreement. The Board, *over the protest* of the employer who claimed he was not bound by the inter-union agreement, quashed the notice of hearing.

In *Local 1102 United Brotherhood of Carpenters (Port Huron Sulphite and Paper Co.)*, 140 NLRB 79 (1962), the charged union successfully moved to have the notice of hearing quashed because it had submitted the dispute with the incumbent union to the AFL-CIO Internal Disputes machinery and was bound by the parent federation's order to withdraw its claim to the work. In granting this motion, the Board said: "Thus, there has been, in effect, a settlement of the dispute." 140 NLRB at 81. In *Seafarers Int'l Union (Delta Steamship Lines)*, 172 NLRB No. 70, 68 LRRM 1431 (1968), the Board also quashed the notice of hearing when, pursuant to a decision rendered under

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<sup>23</sup> 364 U.S. at 585.



the Internal Disputes Plan of the AFL-CIO, one of the disputing unions disclaimed interest in the work involved. In neither *Port Huron* nor *Delta* did the employer participate in the voluntary adjustment proceedings.

Certainly in the three cases discussed there can be no doubt that the Board considered the "parties" to be the disputing unions only. They agreed upon a method to settle their dispute and, whether the employer was satisfied with that arrangement or not, the Board quashed the notice. There is even more reason to quash the notice when, prior to the actual dispute, the two unions agree upon a voluntary method of settlement such as the Joint Board, as was done here.<sup>23</sup>

In conclusion, then, the Board has improperly been interpreting the word "parties" in Section 10(k) to require the employer to be a party to any voluntary method of settlement. Since the two unions had agreed upon a voluntary method of adjustment, that is all that the statute requires and the Board should have quashed the notice of the 10(k) hearing. Since the 10(k) decision was improperly issued, the Section 8(b)(4)(D) decision based on it necessarily must fall and the complaint should be dismissed.

## **II. THE BOARD IN THE INSTANT CASE DID NOT MAKE AN INDEPENDENT JUDGMENT AS REQUIRED BY CBS, BUT SIMPLY AFFIRMED THE EMPLOYERS' ASSIGNMENTS**

Sections 8(b)(4)(D) and 10(k) of the Act were enacted in an effort to end jurisdictional disputes. The Board, in Section 10(k), was "directed to hear and determine"

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<sup>23</sup> Compliance with the decision of the voluntary body is not a prerequisite for quashing the 10(k) notice. The existence of the voluntary procedure automatically precludes the Board from hearing the dispute in a 10(k) proceeding. *Local 46, Wood, Wire and Metal Lathers Union (Building Trades Employers Ass'n of Long Island)*, 120 NLRB 837 (1958) and *Acoustical Contractors Ass'n of Cleveland*, *supra*, 119 NLRB at 1351.

jurisdictional disputes. Unfortunately, the Board, until 1961, took a very narrow view of its responsibility under this section and followed a uniform practice of affirming the employer's assignment unless it was contrary to a Board certification or order or a collective bargaining agreement.

In 1961 in *CBS, supra*, the Supreme Court held "that the Board's interpretation of its duty under Section 10(k) is wrong", 364 U.S. at 586. The Court found that Section 10(k) "requires the Board to decide jurisdictional disputes on their merits", 364 U.S. at 579. As the Court explained:

"[U]nder that section it is the Board's responsibility and duty to decide which of two or more employee groups claiming the right to perform certain work tasks is right and then specifically to award such tasks in accordance with its decision" 364 U.S. at 586.

In exercising this responsibility, the Board was directed to utilize the standards considered appropriate by arbitrators, unions, employers, joint boards and others, as well as experience and common sense in making affirmative assignments between two unions 364 U.S. at 583.

Despite this clear mandate and direction from the Supreme Court, the Board is evading its responsibility under the Act by continuing its pre-*CBS* practice of affirming the employer's assignment. Of course, it has not done so in the same perfunctory manner that it utilized before 1961; now the means are more subtle, but the underlying policy remains the same—the employer's assignment will be affirmed.

For example, analyzing the 10(k) decision in the instant case, we see that the criteria to which the Board gave controlling weight were the Tile Setters' collective bargaining

agreement with the intervenor employers, and the employers' assignments to the Tile Setters. Efficiency and skills the Board found to be equal, and area practice favored the Plasterers. The Board ignored completely certain other factors favoring the Plasterers, and found others which also favored the Plasterers to be ambiguous (A. 18-21).

Clearly, from the Board's comments, it was the employers' assignments which were controlling, despite its discussion of other criteria. The Tile Setters' collective bargaining agreement was accorded substantial weight because that supported the employers' assignments. Where the Board discussed factors favoring the Plasterers, it simply passed over these points by stating that the employers' assignments were not inconsistent with these factors. In effect, the Board started off with the premise that the employers' assignments were correct unless the Plasterers could show overwhelming evidence to reverse them. This is not what Congress intended nor what the Supreme Court directed the Board to do. One commentator has remarked that the Board's current policy is simply echoing pre-CBS policy, "that an employer's assignment should be upset only in the face of circumstances which virtually compel a contrary result." He concluded "there exists an underlying predilection on the Board's part to uphold the employer's assignment".<sup>24</sup>

#### **A. Statistical Analysis of Board's Decisions Demonstrates It Is Not Following CBS**

This underlying predilection of the Board can be gleaned from a statistical analysis of the Board's post-CBS 10(k) cases. For example, in the first seventy 10(k) decisions issued by the Board subsequent to CBS, the employer's

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<sup>24</sup> David, Note, *Jurisdictional Disputes Since the CBS Decision*, 39 N.Y.U.L. Rev. 657, 683 (1964).

assignment was reversed in only five cases.<sup>25</sup> In 1965, out of fifty 10(k) awards issued, the employer's assignment was reversed in only three instances and, in two of them, the assignment in question was a reversal of the employer's own past practice. See Report, *A.B.A. Section of Labor Relations Law*, 443, 444 (1966). In 1967, out of thirty-three affirmative awards issued, only four cases reversed the employer's assignment in full and one in part (Report, *A.B.A. Section of Labor Relations Law*, 196, 198 (1968)). In 1968, the Board issued thirty-one Section 10(k) awards and affirmed the employer's assignment in all of them.

A study of all 10(k) cases in the construction industry since *CBS* through December 31, 1968, shows that the Board, out of eighty-nine affirmative awards issued, reversed the employer's assignment in only six cases, or 6.7% of the total awards rendered in this field.

It is, of course, appropriate in these circumstances to review what the Board has done in the past since, as the Supreme Court has stated in a similar context, "in determining whether or not there has been such an evasion [of responsibility under Section 9(c) of the Act], the results in other recent decisions of the Board are relevant." *NLRB v. Metropolitan Life Ins. Co.*, 380 U.S. 438, 442 (1965). The courts must look behind the language of a Board decision to find its true rationale, because to do otherwise would result in blind subservience to the

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<sup>25</sup> *Local 68, Wood, Wire and Metal Lathers Int'l Union (Acoustics and Specialties, Inc.)*, 142 NLRB 1073 (1963); *Local 449 IBEW (Iowa Power and Light Co.)*, 144 NLRB 870 (1963); *Int'l Longshoremen's and Warehousemen's Union (American Mail Line)*, 144 NLRB 1432 (1963); *Int'l Longshoremen's and Warehousemen's Union (Albin Stevedore Co.)*, 144 NLRB 1443 (1963); *Kentucky Skilled Craft Guild (General Electric Co.)*, 144 NLRB 1611 (1963).

kind of expertise that the Court has called a potential "monster".<sup>26</sup>

The startling results of the above survey of Board cases standing by themselves have led the commentators to the conclusion that the Board has not changed its pre-*CBS* policy. See David, Note, *Jurisdictional Disputes Since the CBS Decision*, 39 N.Y.U. L. Rev. 657, 681-85 (1964); Atleson, *The NLRB and Jurisdictional Disputes: The Aftermath of CBS*, 53 Geo. L.J. 93, 117-21, 133-34, 150-51 (1964); Cohen, *The NLRB and Section 10(k): A Study of the Reluctant Dragon*, 14 Lab.L.J. 905, 917 (1963); Hickey, *Government Regulation of Inter-Union Work Assignment Disputes*, 16 S.C.L.Rev. 333, 387 (1964); and see Feldacker, *Subcontracting Restrictions and the Scope of Sections 8(b)(4)(A) and (B) and 8(e) of the NLRA*, 17 Lab. L.J. 170, 176 n. 28 (1966).

The full import of the Board statistics is readily seen when compared with the statistics from the Joint Board. While the criteria used by both is not identical, the Supreme Court in *CBS* directed the Board to utilize factors considered by joint boards, arbitrators, unions, employers and other groups. The Joint Board considers such factors as trade practice, area practice, agreements of record, decisions of record and efficiency and economy. The Joint Board, however, does not make the employer's preference the controlling or determining factor nor does it give weight to collective bargaining agreements since they are really only self-serving claims, particularly in the construction industry.

Since 1965, when the Joint Board was reconstituted (A. 298)<sup>27</sup> it has affirmed the employer's assignment in ap-

<sup>26</sup> *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 167 (1962). The Court stated there: "[U]nless we make the requirements for administrative action strict and demanding, *expertise*, the strength of a modern government, can become a monster which rules with no practical limits on its discretion."

<sup>27</sup> See *Local 65, Operative Plasterers, etc. (Twin City Tile and Marble Co.)*, 152 NLRB 1609, 1616 (1965).

proximately 20% of its decisions as the figures below demonstrate.<sup>28</sup>

Year	Joint Board Decisions		
	Total Number of Job Decisions Issued	Employer's Assignment Affirmed	Percentage of Total
1965	360	76	21.1
1966	326	68	20.8
1967	481	99	20.5
1968 <sup>29</sup>	503	95	18.8

Surely if the NLRB was fully exercising its responsibility as the Court directed it, the divergence between the number of employer assignments affirmed by the Board and the Joint Board would surely be less than presently exists. While it appears that the Board's practice is prevalent through every industry, an accurate comparison is obtained by reviewing its construction industry cases with those figures from the Joint Board which covers only that industry. The Board has affirmed the employer's assignment in eighty-three of eighty-nine cases since *CBS* or 93% of the total. The Joint Board, on the other hand, has affirmed the employer's assignment in only 20% of its cases since 1965.

<sup>28</sup> See *Quarterly Reports of Chairman, National Joint Board For Settlement of Jurisdictional Disputes Building and Construction Industry* for 1965, 1966, 1967 and 1968. See also O'Donoghue, *Jurisdictional Disputes*, Midwest Labor Law Conference, 5.01, 5.20 (1968). The Joint Board statistics prior to 1965 are not utilized since its criteria was changed when it was reconstituted. The statistics prior to 1965 show an even smaller percentage of affirmance of employer's assignment by the Joint Board. See *David, supra*, 684 n. 193.

<sup>29</sup> Includes only first three quarters of 1968. Last quarter figures are not available yet.

**B. The Board Applies Its Criteria Inconsistently to Reach a Predetermined Result—Affirmance of the Employer's Assignment**

The Board considers various factors in 10(k) decisions but, as we have seen, there is a definite predilection to support the employer's assignment. To do this, the criteria used are juggled and shuffled by the Board from case to case in an effort to give some semblance of authority for the employer's assignment. For example, the Board in this case gave substantial weight to the collective bargaining agreement of the Tile Setters. However, in *Local 1102, United Brotherhood of Carpenters (Don Cartage Co.)*, 160 NLRB 1061, 1076 (1966), the Board pointed out that, particularly in a construction industry case, "[t]he incorporation in the contract . . . . [of] self-serving jurisdictional claims, . . . commands no substantive weight in the resolution of a dispute of the kind before us. It bears at most on the factor of employer assignments . . . ."

In *Local 1622 United Brotherhood of Carpenters (O. R. Karst)*, 139 NLRB 591, 595 (1962), although a contract of one of the disputing unions specifically covered the work in issue, the Board discredited the contracts as a factor to be considered with the statement "these are self-serving statements of jurisdiction by the respective unions and cannot be said to be anything more than a claim to the work." Why then was the Tile Setters' contract accorded so much weight in the instant case? We submit that the Board in *Don Cartage* and *O. R. Karst* properly analyzed jurisdictional clauses in collective bargaining agreements in the construction industry. They are self-serving claims and nothing more than a reflection of the employer's assignment. This, of course, is why they are not considered by the Joint Board in its decisions. In fact, many times "it is the competing claims of right under separate contracts which form the origin of the jurisdictional dispute." *NLRB v. Local 1291, ILA*, 345 F.2d 4 (3rd Cir., 1965);



accord, *New Orleans Typographical Union No. 17 v. NLRB*, 368 F.2d 755 (5th Cir., 1966).

The Board has been equally versatile in its treatment of Joint Board awards or other private machinery settlements, such as arbitrators' decisions. In *Lodge 1743, IAM (J. A. Jones)*, 135 NLRB 1402, 1411 (1962), the Board gave substantial weight to decisions by the parent federation of the disputing unions. However, in *O. R. Karst, supra* at 596, the Board refused to give any weight to evidence of approximately three hundred decisions by the Joint Board over a period of twelve or thirteen years which awarded work, concededly similar to that in dispute, to the respondent union.<sup>30</sup> In *Local 1, Bricklayers, Masons and Plasterers Intl. Union (Consolidated Engineering Co.)*, 141 NLRB 119 (1962), the Board refused to give any weight to an inter-union settlement procedure that found the work in dispute came within the jurisdiction of the respondent unions under the agreement. In *Local 964, United Brotherhood of Carpenters (Carleton)*, 141 NLRB 1138 (1963), and *Cuyahoga etc. Counties District Council (Berti Company)*, 142 NLRB 163 (1963), the Board refused to give any weight to Joint Board decisions involving the very same disputes. In other words, in each of these cases, the Board gave little or no weight to decisions of the private bodies where those decisions did not support the employer's assignment.

Conversely, the Board has accorded substantial weight to private decisions which supported the employer's assignment. See *Local 46, Wood, Wire and Metal Lathers Intl. Union (Precrete, Inc.)*, 136 NLRB 1072, 1080-82 (1962) (the Board relied heavily on an ambiguous private settlement to affirm the employer's assignment) and *Local 825*,

<sup>30</sup> The Board, in a very cavalier fashion, stated with regard to these Joint Board decisions: "We do not believe that such decisions indicate more than that the instant dispute between the Unions is one of longstanding and that neither Union has conceded to the other the right to perform the work in dispute" 139 NLRB at 596.



*Int'l Union of Operating Engineers (Schwerman Co. of Pa.)*, 139 NLRB 1426, 1431 (1962) (decision of AFofL was "persuasive").

The Board's policy of affirming the employer's assignment has even resulted in inconsistent interpretation of the same private agreement and arbitrators' decisions thereunder. In *Local 10, Int'l Longshoremen's and Warehousemen's Union (Matson Nav. Co.)*, 140 NLRB 449 (1963), the Board, affirming the employer's assignment of the work to the Carpenters, ignored a specific provision in the contract between the ILWU and the P.M.A. (the association to which the employer belonged) and also ignored an arbitration award under that contract, assigning this work to the ILWU. However, in *Local 19, Int'l Longshoremen's and Warehousemen's Union (American Mail Line Ltd.)*, 144 NLRB 1432, 1441 (1963), a case involving some of the same parties and the same contract, the Board awarded the work to the Longshoremen's Union, finding that the "most persuasive" factor was the interpretation of an arbitrator under the ILWU-P.M.A. contract that assigned the work to the Longshoremen.

In *Matson, supra*, however, an arbitration award interpreting the same agreement and also assigning the work in dispute to the ILWU was given no "significant weight" by the Board. The Board's inconsistent consideration of the same agreement and similar arbitration decisions thereunder is understandable only when it is realized that, in both cases, the employer's final assignment was affirmed.

This discussion of the Board's handling of the various criteria involved in jurisdictional disputes since *CBS* and the statistical analysis of its decisions and those of the Joint Board shows conclusively that the Board's approach is simply a disguised continuation of its pre-*CBS* policy of affirming the employer's assignment. This means the Board has unlawfully abdicated its responsibility under the Act to the employer and evaded, in a fundamental manner, its responsibility under the Act.

The A.B.A. Special Committee, after making a similar review of the cases and statistics, reached the same conclusion as other commentators that "the Board has ignored or juggled the factors before it in a given case, often inconsistently, to reach an apparently preconceived result". Report, *supra*. A.B.A. Section of Labor Relations Law 452, 455 (1965).

As the Supreme Court in *CBS* found that the Board's unlawful policy under Section 10(k) necessitated reversal of the Board's decision there, so this Court should also refuse enforcement and set aside the decision in the instant case, since the 10(k) "determination" here represents an unlawful continuation of the pre-*CBS* policy.

### III. THE SECTION 10(k) DECISION AND THE SECTION 8(b)(4)(D) DECISION ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARE ARBITRARY AND UNREASONABLE

#### A. Board Ignored Certain Criteria and Erroneously Applied Other Criteria

The Board's assignment of the disputed work to the Tile Setters is based on their collective bargaining agreement and the employers' assignments. These factors outweighed others favoring the Plasterers, according to the Board. Assuming, for the purposes of argument, that the Board properly weighed the factors it considered, its Decision cannot stand, since it completely ignored other important factors, mentioned but did not consider inter-union agreements, and erroneously concluded that the Joint Board decisions in this case were ambiguous. In this situation then, the issue is not only whether the Board properly weighed the evidence, but also whether it properly carried out its function under § 10(k). Its failure to even consider certain factors which would favor the Plasterers, coupled with the Board's known predilection to affirm the employer's assignments, calls for close scrutiny of the reasons for its Decision.

### 1. Inter-Union Agreement and the Joint Board Awards

In 1917 the Plasterers and the Tile Setters entered into an agreement concerning the preparation of walls to receive tile, which stated in relevant part:

"First, it is agreed that the plasterers of the O.P. & C.F.I.A. and the B.M. & P.I.U. shall prepare or plaster all walls which are to receive tile. They shall plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat which shall be put on by the Tile Layer to act as a bed for his tile." (A. 432).

In 1924 a national decision spelled out the division of work in similar language, except there was no mention of scratching of the plumb coat by the Plasterers. (A. 433)

Both the Tile Setter witnesses and the Plasterer witnesses agreed that the Agreement and Decision set forth functions that each trade are to do in preparing walls to receive tile, and both unions recognize these jurisdictional documents. (A. 75, 76, 311). Therefore, even though the agreement and decision are of many years standing, they are still relevant to the dispute here. The Board acknowledged their existence, but no more. However, they are important since they are the bases of the Joint Board's decisions in this case. That body interpreted the Agreement and Decision in light of the innovations in the tile industry. (A. 309)

The Joint Board, in its clarification of March 15, 1967 (A. 424) explained the methods of installing tile and then set out in detail its decision. Since the Board claims this is ambiguous, it is appropriate to quote from the Joint Board:

"The Joint Board voted to clarify its job decision by stating that the coat of plaster material which is applied directly to the initial scratch coat or directly to clay tile or cement block walls is for the primary purpose of plumbing, rodding and squaring of walls to

receive tile and, in accordance with the agreement of record and the decision of record referred to above, shall be assigned to Plasterers.

“The Joint Board, in recognition of the problems created by having two different trades working at the same time on separately identifiable work operations, further voted that if the tile to be adhered to the coat of plaster material applied to the initial scratch coat or directly to clay tile or cement block walls is set during the same day in which such coat is applied, the plaster materials shall be applied by tile setters in the interest of efficient job operation.

“When the tile is not set during the same day in which the plaster materials are applied to the initial scratch coat or directly to clay tile or cement block walls, the Joint Board voted that the application thereof is for the primary purpose of plumbing, rodding and squaring the walls to receive tile and shall be assigned to plasterers in accordance with the agreement of record of August 22, 1917 and the decision of record of February 21, 1924.” (A. 424, 425)

Needless to say, this decision is clear and unambiguous. The Joint Board recognized that if the Tile Setters plan to set their tile in the plumb coat of mortar the *same day* it is installed it would not be efficient to have plasterers applying the plumb coat and Tile Setters set the tile. In this situation it would be more efficient, according to the Joint Board, to allow the Tile Setters to apply the plumb coat, so that two different trades are not working on the job at the same time.

However, the Joint Board recognized that when tile is *not* to be set in the plumb coat of mortar the same day the plumb coat is installed, i.e., the Tile Setter is going to utilize the new dry-set mortars after the plumb coat has dried, then the “primary purpose” of the plumb coat is “plumbing, rodding, squaring of walls to receive tile and shall be assigned to plasterers in accordance with the agreement of record of August 22, 1917 the decision of

record of February 21, 1924 (A. 426). In effect, the Joint Board applied the Agreement and Decision to the innovations in the industry by interpreting them in a reasonable manner to maintain the basic underlying jurisdictional division between the two crafts, consistent with efficiency of operation.

The Brief of the amicus curiae explains the procedures of the Joint Board so it is not necessary to repeat them here. Suffice to say that the evidence in this record shows that the two unions and the Texas State were given ample opportunity to present evidence to the Joint Board and argue their positions before the original decision was issued, and before the clarification was issued. The contractors chose not to submit any evidence but both unions submitted evidence to the Board and argued orally for their respective positions (A. 307, 308, 409, 412). The Tile Setters, after the original decision and clarification, had an opportunity to ask for reconsideration and to appeal to an impartial appeals board, but did not do so (A. 308, 309).<sup>31</sup>

It is difficult to understand the Board's erroneous characterization of the Joint Board action as "ambiguous," except when the Board's policy of affirming employers' assignments is taken into account. The Joint Board set out its clarification in great detail in compliance with the suggestions of the Board in the past,<sup>32</sup> and it made a reasonable division of the work. Actually the Joint Board and the Board agree on the efficiency of the application of the plumb coat, and if the Board followed the logical reasoning of the Joint Board, it would necessitate a reversal of the employers' assignments—something the Board will rarely do.

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<sup>31</sup> The Joint Board referred to the job in dispute as the "Science Building" rather than the "Library." This caused no problems since the employers and the unions knew the decisions applied to the Library job (A. 45, 46, 48, 55, 150, 412).

<sup>32</sup> See *Local 65, Operative Plasterers, etc. (Twin City Tile & Marble Co.)*, 152 NLRB 1609, 1614, n. 5 (1965).

2. The Guide Specifications Prepared by the Texas Tile Contractors and the Plastering Contractors

As mentioned previously, in 1961 the Texas Ceramic Tile Contractors Association (hereinafter "TCTC") and the Texas Lathing and Plastering Contractors Association (hereinafter "TLPC") prepared a Guide Specification for the benefit of architects throughout the state of Texas, for the preparation of walls to receive tile under any method of installation (A. 381-384, 183).<sup>33</sup> The Specification was developed specifically to cover the problem involved in this case as to which trade and contractor should apply the various coats of mortar on a wall which is to receive tile. The Specification, approved and accepted by both Associations, was the result of two years of joint meetings of representatives of both contractor groups. (A. 366-388).

The Guide Specification clearly provides that Plasterers are to install the plumb coat of mortar for any tile installation, whether conventional or thin set. It begins by providing:

"In all instances where Scratch Coat (first coat on metal lath) and *Brown Coat* (second coat on metal lath and *plumb* or leveling coat on Masonry) is specified, this portion of the work will be finished and *installed* by the Plasterer, under his Contract" (emphasis added). (A. 381)

It then divides the installation of tile into three methods: (1) The conventional method; (2) A thin-set method using organic adhesives such as mastics (glue-type adhesives) (not relevant here); and (3) "Thin-set: Dry-set Portland Cement Mortars (inorganic)" (A. 382).

<sup>33</sup> The Guide Specification is referred to as Plasterers' Exhibit 16 in the testimony. Since it is the same as Plasterers' Exhibit 20P included in the Appendix (pp. 381-384) it was only reproduced once.

In the conventional method, the Specification states that the Plasterer is to put on the scratch and brown coat which will be scratched "to receive regular cement mortar of approximately  $\frac{3}{8}$ " thickness, defined as Float Coat or Setting Bed installed by the Tile Contractor." In the thin-set method with dry-set mortars, the Specification provides that the Plasterer shall install his brown coat "rod finished (not troweled) to receive  $\frac{1}{8}$ " thickness of *Dry-Set Mortar setting bed* by Tile Contractor" (A. 382) (emphasis added).

This Specification supports the position of the Plasterers that dry-set mortar is merely a substitution for the conventional tile setting bed and, therefore, the setting bed itself. It could not be clearer than as set forth in the Specification. Nothing in the Specification indicates that the use of dry-set mortars reduces or eliminates the scratch or brown coat of the Plasterers. On the contrary, in either the conventional or thin-set methods, the Plasterers' brown and scratch coats remain the same.

This Guide Specification does not stand alone; it is consistent with the American Standard Specifications for the Conventional and Thin-Set methods of installing tile. These Specifications state that the scratch coat and the brown coat are to be installed by the Plasterers (A. 331, 332, 341), with the Tile Setters applying a setting bed of regular cement mortar or dry-set mortar for his tile.

The Guide Specification is also consistent with the recommended procedure suggested by the manufacturer of the dry-set mortar used here. It is provided there that the Plasterer is to install the scratch and brown coat behind the dry-set mortar setting bed (A. 354).

The Guide Specification is also consistent with the Joint Board award and follows the 1917 Agreement and 1924 Decision. One of the members of the joint committee that prepared the Guide, testified that the committee



worked from the 1917 Agreement and area practice. He stated:

“[We] used the green book and area practice and tried to develop a combination of exactly what was going on at the present time. It was not anticipated that we were changing, really, anyone’s jurisdiction” (A. 219).

In the Houston area, the Guide Specification is still recognized by architects “because most of the specifications adhere very closely to the way this is set up.” (A. 221, Brueggeman). The Guide Specification has a tremendous effect on the work to be performed by the two disputing crafts. The Specification contradicts the testimony of the employers who testified on behalf of the Tile Setters with respect to the definition of setting bed, skills of the Plasterer, feasibility of the Joint Board award, and efficiency of installation. It naturally contradicted the employer’s assignment.

This Guide Specification was the method adopted by the two employer groups to make a reasonable and clear division of the work between the two disputing trades. It is consistent with the division adopted by the disputing unions’ own body, the Joint Board, and considering all this, it should have been accorded substantial weight by the Board. It is difficult to understand why the Board ignored it. There was no evidence introduced into the record rebutting the preparation, promulgation or present efficacy of the Specification. Both of the employers involved in this case were members of the TCTC at the time the Specification was adopted and at least one, in fact, had served in various official capacities of that group. (A. 135, 156).

The inescapable conclusion is that the Board could not justify affirming the employers’ assignments in the face



of this Specification, so it just refused to consider it. This, we submit, was arbitrary and unreasonable.<sup>34</sup>

### 3. Area Practice

While the Board is entrusted with the responsibility to weigh the evidence, its action cannot be approved when it flagrantly distorts the record to reach its pre-determined result. Here, the Board admitted that area practice favored the Plasterers, but then held that the assignment to the Tile Setters was in accordance with the practice of the employers and "not inconsistent with area practice or industry practice." (A. 19). What the Board apparently means here is that the Plasterers have been doing most, if not all, of the work in dispute in the Houston area for many years, but this is outweighed by the fact that the two employers involved here assign what work they get to the Tile Setters.

The Board had no choice but to admit that area practice favored the Plasterers, since several plastering contractors testified about 75 recent jobs in the area where Plasterers had performed the work in dispute. (A. 224-276, 286, 287). They also estimated that between 90-95% of all mortar coat backup for tile in the Houston area is done by Plasterers (A. 199, 262, 269) and the mortar coat behind tile is specified in the plastering specifications on most all commercial jobs in the area (A. 224). The Tile Setters, on the other hand, introduced no evidence of area practice by

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<sup>34</sup> The Board also ignored the extensive evidence of the coordinated classroom and on-the-job apprentice program of the Plasterers, although in the past this factor has been considered important by the Board in awarding the work to one of disputing unions (A. 277-286). See *O. E. Karst, supra*, 139 NLRB 591 (1962) and *Local 317, Int'l. Printing Pressmen (O'Brien Suburban Press, Inc.)*, 137 NLRB 1758 (1962).

The Tile Setters' "apprentice program" was a haphazard halfway on-the-job affair (A. 160, 163). Again, this factor was ignored by the Board because, like the Guide Specification, it would have established the weakness of the Tile Setters' case and be contrary to the employers' assignments.

reference to specific jobs other than a few mentioned off-hand in connection with other testimony.

To find that the Plasterers' substantial evidence is overcome by the employers' assignments is unreasonable; to conclude that their assignments are not inconsistent with the area practice is arbitrary and contrary to Board precedent. In *Don Cartage, supra*, 160 NLRB 1061, 1078 (1966), the Board stated "an employer's assignment of disputed work cannot be made the touchstone in determining a jurisdictional dispute," and in the building industry particularly, an employer's prior work assignment practices will not be given as much weight as in a different industry. See *Local 49, Int'l. Union of Operating Engineers (Egan-McKay Electric Contractors, Inc.)*, 164 NLRB No. 94, 65 LRRM 1143 (1967).

The reason for this is that specialty subcontractors in the construction industry usually only hire one type of craftsmen (other than laborers), have an agreement only with the union that represents them and assign them all the work the employer obtains. In this industry, then, it proves nothing to show that a particular specialty subcontractor assigns work to his own employees or that he is satisfied with their work. What is far more persuasive is the area practice, that is, which type of specialty subcontractor and craftsmen have been assigned the majority of the disputed work in the area by owners and general contractors. If the Board had properly considered the area practice in this light, it could not have concluded that the employers' assignments were "not inconsistent with area practice."

#### **4. Collective Bargaining Agreements and Employer Assignments**

In the previous section of this brief, we pointed out that the Board has taken many positions with regard to the weight it would apply to collective bargaining agreements. In this case, the collective bargaining agreement

of the Tile Setters with the employers and the employers' assignments were given controlling weight in the assignment to the Tile Setters. We have demonstrated that in the construction industry particularly, employer practice should not be given great weight, and the same can be said for collective bargaining agreement.

Here, the Tile Setters' contract with their employers assigned the work in dispute to them. The contract between the Plasterers and their employers assigned the work in dispute to the Plasterers. Whether one agreement did so in more detail than the other does not shed any light on the basic controversy as to which craft should properly perform the work. If anything, the Board's reliance on this factor will foster jurisdictional disputes and probably economic disputes, since the crafts will attempt to get broad work assignment clauses in their contracts with contractors, resulting in many more conflicting jurisdictional claims. Collective bargaining agreements are notoriously poor standards by which to judge the right of a craft to perform disputed work. The Joint Board criteria does not include consideration of such agreements (A. 431, 432).

In conclusion, then, the issue on the merits of the actual dispute is not simply a question of the weight assigned to the various criteria by the Board, but goes deeper to bring into focus the failure of the Board to consider extensive relevant evidence and questions the Board's conclusions as to the importance of various factors.

In addition, the relative weight accorded other factors by the Board is shown to be improper and supports the conclusion that the Board, while ostensibly weighing the criteria, was really just reaching for support for the employers' assignments.

**CONCLUSION**

For the foregoing reasons, it is respectfully requested that the Board's 8(b)(4)(D) Decision and Order and the 10(k) Decision and Determination be set aside and enforcement of the Order denied.

Respectfully submitted,

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January, 1969



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**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PLASTERERS LOCAL UNION NO. 79 OPERATIVE PLASTERERS  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO,  
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent,*  
and

TEXAS STATE TILE & TERRAZZO COMPANY, INC., ET AL.,  
*Intervenor.*

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On Petition to Review and Set Aside and on  
Cross-Applcation for Enforcement of an  
Order of the National Labor Relations Board

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**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

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United States Court of Appeals  
for the District of Columbia Circuit

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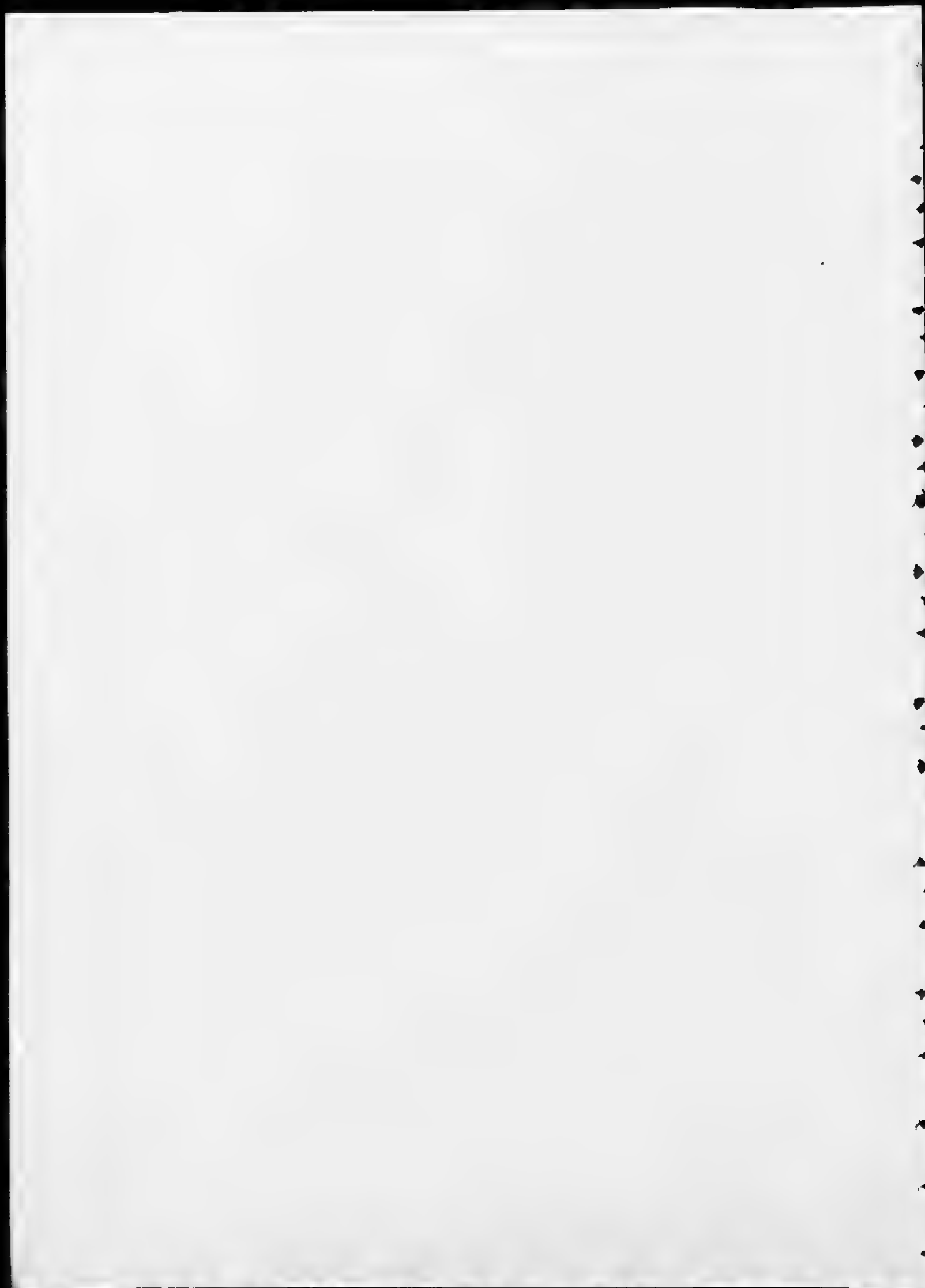
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**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,073

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PLASTERERS LOCAL UNION NO. 79 OPERATIVE PLASTERERS  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO,  
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent,*  
and

TEXAS STATE TILE AND TERRAZZO COMPANY INC., *ET AL.*,  
*Intervenors.*

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On Petition to Review and Set Aside and on  
Cross-Applcation for Enforcement of an  
Order of the National Labor Relations Board

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**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

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**STATEMENT OF THE ISSUES PRESENTED**

The parties have stipulated that the issues presented are as follows:

1. Whether substantial evidence on the whole record supports the Board's finding that Plasterers Local Union No. 79 picketed the M.D. Anderson Library job with an object of forcing or requiring Texas Tile

to change the assignment of the disputed work from its own employees, who were members of or represented by Tile Setters Local No. 20, to employees who were members of or represented by Plasterers Local Union No. 79.<sup>1</sup>

2. Whether the Board's determination in the Section 10(k) proceeding that employees represented by Tile Setters Local No. 20 are entitled to the disputed work is valid and proper.

3. Whether the Board properly found that the employer controlling the work assignment, as well as the rival unions, must approve and enter into a voluntary adjustment procedure in order to preclude a Board hearing and determination pursuant to Section 10(k) of the Act.

In accordance with Rule 8(d) of this Court's General Rules, the Board states that this case is before the Court for the first time on the merits.

### COUNTERSTATEMENT OF THE CASE

This case is before the Court upon the petition of Plasterers Local Union No. 79, Operative Plasterers' and Cement Masons' International Association, AFL-CIO ("Plasterers"), to review, and on the Board's cross-application to enforce, an order of the Board issued on June 27, 1968, pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. §151, *et seq.*). The Board's Decision and Order in the unfair labor practice proceeding is reported at 172

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<sup>1</sup> Counsel for petitioner orally informed counsel for the Board that petitioner would not contest this finding. In its brief, petitioner has not challenged the finding. Accordingly, this is no longer an issue in this case (Plas. Reply Br. n. 2).

NLRB No. 77 (A. 1-11).<sup>2</sup> The Board's earlier Decision and Determination of Disputes made pursuant to Section 10(k) of the Act is reported at 167 NLRB No. 23 (A. 11-23). The Court has jurisdiction over the proceedings under Section 10(f) of the Act, and has granted leave to intervene to various parties who participated in the Board proceedings.

#### I. THE BOARD'S FINDINGS OF FACT

Briefly, the Board found that Plasterers engaged in conduct proscribed by Section 8(b)(4)(i) and (ii)(D) of the Act, with an object of forcing Texas State Tile & Terrazzo Company ("Texas State") and Martini Tile and Terrazzo Company ("Martini"), intervenors herein, to change the assignment of the work of applying to walls a coat of Portland cement mortar upon which tile was to be installed from their own employees who were members of or represented by Tile, Terrazzo and Marble Setters Local Union No. 20, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO ("Tile Setters") to employees who were members of or represented by Plasterers. (A. 8). The Board, in the earlier proceeding pursuant to Section 10(k) of the Act, determined that employees represented by Plasterers were not entitled to perform the disputed work and rendered an affirmative award of the work to the employees represented by Tile Setters (A. 21-22).

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<sup>2</sup> "A." refers to the portion of the record printed as an Appendix filed by the parties. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence. Occasional "Tr." references are to the transcript of the hearing in the Section 10(k) proceeding which are not reproduced in the Appendix.



### A. The disputed work—M.D. Anderson Library

In 1965, Southwestern Construction Company, a general contractor, entered into a contract with the University of Houston to construct an addition to the M.D. Anderson Library. The tile and terrazzo work was subcontracted to Texas State which commenced work in August, 1966 (A. 13, 4; 38, 29-30, 44). Texas State assigned the tile work to employees represented by the Tile Setters, the union with which it had a collective bargaining agreement; the contract specifically covered the work to be performed (A. 13, 18, 4; 42, 44, 47, 61).<sup>3</sup> This work consisted of preparing walls and applying tile to four stairwells and two restrooms on each floor of the eight story library building (A. 38-39, 150-151). The initial work was performed in the restrooms where the Plasterers applied a thin scratch coat of cement over metal lath (A. 39). The next coat of cement, called a "float coat" or "setting bed" by Tile Setters was applied by Tile Setters; the Plasterers claim that this is a "brown coat" (Tr. 59, see discussion *infra*, pp. 7-10, 30-34). Plasterers, through Business Agent George Longshore, contacted Tile Setters sometime during the fall of 1966, and claimed that the float coat was the work of Plasterers (A. 13; 53-54, 49). Tile Setters rejected this demand, and Plasterers submitted the matter to the National Joint Board for the Settlement of Jurisdictional Disputes ("Joint Board") (A. 13; 54-55). The Joint Board, on November 10, 1966, awarded the disputed work to the Plasterers, which it characterized as "the plumbing

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<sup>3</sup> The local agreement between Tile Setters and Tile, Terrazzo and Marble Contractors of Houston, Texas, to which Texas State was a party, incorporated by reference the work jurisdiction specified in the National Agreement between Tile Setters International Union (B.M. & P.I.U.O.A.) and Tile Contractors' Association of America, Inc. (A. 434). The latter agreement (Art. II, Sec. 2(b)) sets forth the tile setters' work as including, *inter alia*, "The application of a coat or coats of mortar, prepared to proper tolerance to receive tile on floors, walls and ceilings regardless of whether the mortar coat is wet or dry at the time the tile is applied to it." (A. 18; 61, 429-430).

rodding and squaring of walls which are to receive tile" (A. 13-14; 313-314). Neither Texas State, nor the local or national contractors associations to which it belonged, were bound by the decisions of the Joint Board (A. 4, 14; 48). Thereafter, Plasterers made several attempts to obtain the work, but Tile Setters and Texas State refused to accede to their demands (A. 14, 4; 46, 49). On January 24, 1967, Plasterers established a picket at the jobsite (A. 4-5, 14; 44). It is not disputed that the object of the picketing was to force Texas State to change the assignment of the disputed work to employees who were represented by or members of Plasterers. (A. 5) (*supra*, n. 1). A work stoppage ensued as a result of the picketing (A. 5, 14; 33, 45, 47). The picket was removed after the United States District Court for the Southern District of Texas, Houston Division, upon application of the Board's Regional Director, issued an injunction on February 10, 1967 (A. 5, 14; 28-29).

At the time the picketing commenced, all of the ceramic tile work on the bathrooms had been completed (A. 38-39). The only remaining work in dispute which Texas State had to perform was the application of a coat of Portland cement over the scratch coat<sup>4</sup> on the balustrades of the stairwells upon which quarry tile was to be installed (A. 14; 44, 45-46, 40, 177-178).<sup>5</sup> The Plasterers had applied the scratch coat and Tile Setters had put on part of the disputed float coat when the demand was made (A. 14; 32-33, 35-36). Specifically, Business Agent Longshore claimed the float coat as Plasterers' work but only if Tile Setters allowed the coat to dry

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<sup>4</sup> The scratch coat was applied over expanded metal lath which was attached to metal channels or studs which served as the steel framing for the wall (A. 31, 41).

<sup>5</sup> The balustrades were low, solid partitions which served as center rails on the stairs (A. 46).

before applying the tile; Tile Setters asserted that this distinction was impractical since the quarry tile was too heavy to set on a wet bed (A. 35-36).<sup>6</sup>

### B. The disputed work — Rainbo Bakery

Martini was given a direct contract by Rainbo Baking Company for remodeling a panning room at its bakery. Martini had a collective bargaining agreement with Tile Setters and assigned the float coat — the work in dispute — to Tile Setters in accordance with this agreement (A. 14; 5; 57, 61, 125, 128).<sup>7</sup> On March 17, 1967, Plasterers picketed the job site for the conceded purpose of forcing Martini to change the assignment of the disputed work to employees who were represented by or members of Plasterers (A. 15, 5; 439, 57). At Rainbo's request, Martini removed its employees from the job and the picketing ceased (A. 15; 59-60, 98-99). Thereafter, Martini returned and completed the job without further incident (A. 15, 6; 57-58). Plasterers did not submit the dispute to the Joint Board (A. 15). Neither Martini nor any of the associations to which it belonged were bound by the decisions of the Joint Board (A. 57, 128).

The Rainbo job consisted of applying one coat of ½" Portland cement over metal lath which was nailed to painted walls (A. 15; 127, 58, 108, 112-113, 131-132, 99). Plasterers claimed this coat (A. 15; 59, Tr. 154).

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<sup>6</sup> Furthermore, since the float coat was not sufficiently bonded to the scratch coat, the bond would have broken in the process of tapping on the tile if the tile were set the same day that the float coat was applied (A. 36, 37, 67).

<sup>7</sup> The pertinent provisions of this agreement are set forth, *supra*, n. 3.

### C. Description of the Methods of Tile Installation

The method of applying tile to walls does, of course, depend upon the specifications of the architect, general contractor or owner. The specifications, in turn, will be influenced by the nature of the job, type and size of tile to be installed, cost, and the existence of fixtures which might limit the number of coats of backup cement which can be applied. Depending on the specifications, one or more of the following steps set forth below may be eliminated.

#### i. The scratch coat

The scratch coat is a thin coat of cement which is applied over metal lath. It serves to stiffen otherwise flexible lath and to provide a solid base for the second coat of cement; this coat is "scratched" — that is, the surface is scored with a pointed tool — to provide a mechanical bond with the next coat. (A. 52, 291). The parties agree that where a scratch coat is specified, it is the work of Plasterers (A. 19; 52).

In the Anderson library job, Plasterers applied the scratch coat; in the Rainbo bakery job, there was no scratch coat (A. 14; 33, 58). As indicated in the Plasterers' brief, where the backup is solid, a scratch coat is eliminated as unnecessary (Pl. br. p. 9).

#### ii. The brown coat

In the so-called conventional method of installation, a second coat of sand and Portland cement is applied to the scratch coat; this is termed a brown or plumb coat (A. 52, 62). The function of this coat is to provide a *preliminary* "plumb, rod and square of the room" — that is, flat and perpendicular surfaces throughout (A. 157, 105, 72-73, 211-212). The brown coat is scratched to a depth of 1/8" to 3/16" (A. 93, 293, 399). Unless the brown coat is sufficiently scratched, it will not be possible to

assure a good bond between the brown coat and the next coat (A. 69, 70, 93, 103, 213-214).<sup>8</sup> Where the job requires the application of a brown coat, the parties agree that this is the work of the Plasterers (A. 52). However, in neither the library nor Rainbo job was a brown coat applied.<sup>9</sup>

iii. The float coat or setting bed

The float coat<sup>10</sup> is applied over the scratched brown coat in the conventional three-coat method; over the scratch coat where the brown coat is omitted (Anderson library); or directly over the metal lath where both the scratch and brown coats are omitted (Rainbo bakery) (A. 52, 124; 363) (diagram 205). This coat regulates not only the final dimensions of the room, but also the appearance of the tile, the plumbness and trueness of line, and the correctness of the pattern (A. 72-73, 165). Because of the inflexibility of tile, the plumbness and trueness of the float coat must be precise; imperfections in the brown coat may be rectified through the application of the float coat (A. 207, 211-212). In order to properly perform this operation, it is necessary to know the room's final dimensions and the size of the tile to be applied. This information is often not available at the time the brown coat is applied (A. 100-102, 105, 166, 157, 149, 107, 242, 207).

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<sup>8</sup> A 1917 agreement between Plasterers and Tile Setters (See p. 30 & n. 45, *infra*), provides that the Plasters shall scratch the brown coat "so as to guarantee adhesion of the final coat which shall be put on by the Tilelayer to act as a bed for his tile." (A. 432, 53).

<sup>9</sup> In remodeling work, such as Rainbo, where there is an existing wall, the brown coat is omitted (A. 64, 124). Nor is the brown coat applied where, as at the library and bakery jobs, there is insufficient room for this coat (A. 147-148, 34-35, 106, 38, 40-41, 208, 180).

<sup>10</sup> This term derives from the fact that the Tile Setter "floats" Portland cement mortar between wooden lattice strips which are placed at each end of the wall to provide plumb dimensions; the term "float coat" is used interchangeably with "setting bed" (A. 100, 105-106).

For these reasons, the application of the float coat is the real art of the craft of tile setting; a tile installation is only as good as the float coat (A. 106, 164-165, 147, 175).<sup>11</sup> Plasterers concede that in the three-coat method, the setting bed is the work of the Tile Setters, but assert that the setting bed has been replaced by new types of bonding agents (Pl. br. pp. 8-9; A. 16). The 1917 Green Book agreement between Tile Setters and Plasterers provides that the setting bed is the work of Tile Setters (See p. 30 and n. 45, *infra*).

#### iv. The bonding agent

The final step in the installation of tile is the application of the bonding agent. It may be applied to the back up or directly to the tiles. In both the three-coat method and the one-coat method, the bonding agent is applied to the float coat.<sup>12</sup> The bonding agent may be neat cement, organic adhesive, or a dry-set mortar (A. 64).<sup>13</sup> When neat cement is applied, the tile must be soaked to prevent the tile from drawing moisture from the bonding agent (A. 116). However, when a dry-set mortar<sup>14</sup> is used instead of neat cement, this step may be eliminated because the

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<sup>11</sup> Because of the importance of this operation, between 50 and 65% of the tile setters' three-year apprenticeship program is spent in learning how to apply the float coat (A. 106-107, 163, 68, 172).

<sup>12</sup> Where dry-set mortars are used, the tile may be applied directly to a solid back up of sheetrock, concrete block, etc., thus eliminating the scratch, brown and float coats (A. 129-130, 64-66, 124). While this "thin-set method" is less costly because the preceding coats of cement are omitted, the final appearance of the tile will accordingly be less satisfactory (A. 66, 350 ("note")).

<sup>13</sup> Neat cement, sometimes called a pure coat, consists of Portland cement and water mixed to a creamy consistency (A. 145, 323 (§ 1-2.1(c)(1))).

<sup>14</sup> The dry set mortar consists of a mixture of 80% Portland cement and 20% additives (A. 151).

chemical additive in the mixture will retain the moisture (A. 135-136, 104, 145, 116).<sup>15</sup> The bonding agent is approximately 1/8" thick, depending on the type of tile to be installed (A. 125, 129). It may not be applied over an 1/8" thick as it will run (A. 104, 110-111, 158-159, 209). Because of the thinness of this coat, it cannot be rodded, squared and plumbed to compensate for inequalities or lack of plumbness or trueness in the surface of the backup, and hence it does not function as a float coat (A. 146, 159, 104, 110-111, 158-159, 97-98). Rather, it is analogous to the function performed by wallpaper paste (A. 167-168).<sup>16</sup>

In both the Rainbo and the library jobs, dry-set mortar was utilized as the bonding agent (A. 110, 151).

#### D. Proceedings before the Board

On April 6, 7, and 10 through 14, 1967, the Board conducted a hearing pursuant to Section 10(k) of the Act. Thereafter, the Board issued its Decision and Determination of Disputes in which it found, after weighing the relevant factors presented in the evidence, that employees represented by Tile Setters were entitled to perform the work of applying to walls a coat of Portland cement mortar upon which tile was to be installed.

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<sup>15</sup> As explained by the Tile Council of America, "Hardening of the mortar does not occur as a result of evaporation of this water, but rather the result of a chemical reaction between the water and the contents of the cement. The so-called 'dry-setting' properties of these mortars are due to the fact that the viscosity of the water is sufficiently high so that water is not lost to a porous backing, or to dry tile, before the cement has had a chance to react with this water." (A. 359, 104).

<sup>16</sup> Hence, the dry-set mortar is a substitute for the neat cement, not the float coat (A. 145-146). As indicated by the Tile Council of America: "[A]ll of the thin-bed materials can be used to bond ceramic tile to a mortar bed in lieu of the customary neat cement bond coat." (A. 362, 363-365, 86).



Accordingly, on August 22, 1967, the Board directed Plasterers to notify the Regional Director within 10 days whether it would comply with the Board's determination (A. 11-23).

When Plasterers refused to comply with the Board's determination of the work disputes, the General Counsel of the Board issued a complaint against petitioner alleging a violation of Section 8(b)(4)(i)(ii)(D) of the Act (A. 2, n. 2; 440). At the unfair labor practice hearing, held on October 30, 1967, the parties waived a hearing before the Trial Examiner and agreed to submit the proceeding directly to the Board (A. 2-3; 441-442). The parties further agreed that the record in the Section 10(k) proceeding be made part of the instant proceeding (*ibid.*).

## II. THE BOARD'S CONCLUSION AND ORDER

The Board concluded that Plasterers violated Section 8(b)(4)(i)(ii)(D) of the Act by its threats and picketing with the object of forcing Texas State and Martini to assign the disputed work to employees represented by Plasterers rather than employees represented by Tile Setters (A. 5-6, 8).

The Board's order requires petitioner to cease and desist from inducing or encouraging individuals employed by Texas State, Martini or any other person engaged in commerce to strike, or from threatening, coercing or restraining the aforesaid persons, where in either case an object thereof is to force or require Texas State or Martini to assign the work of applying to walls a coat of Portland cement mortar upon which tile is to be installed at the Anderson library and Rainbo jobs, to employees represented by petitioner rather than to employees represented by Tile Setters. Affirmatively, the order directs petitioner to post appropriate notices and to



notify the Board's Regional Director what steps have been taken to comply with the order (A. 7-11).<sup>17</sup>

## ARGUMENT

THE BOARD'S DETERMINATION IN THE SECTION 10(k) PROCEEDING THAT EMPLOYEES REPRESENTED BY TILE SETTERS ARE ENTITLED TO PERFORM THE DISPUTED WORK IS VALID AND PROPER

### A. Introduction — the statutory framework

Section 8(b)(4) of the Act forbids a union "(i) . . . to induce or encourage any individual employed by any person to engage in a strike . . . or (ii) to threaten, coerce, or restrain any person engaged in commerce, where in either case an object thereof is . . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work . . . ." Section 8(b)(4)(D) is supplemented by Section 10(k) which provides:

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<sup>17</sup> In the 10(k) proceeding, Tile Setters requested the Board to issue an award covering the entire United States, or alternatively, the geographic area in which the employers operate. As the record did not support a finding that the disputes would recur between the parties, the Board's determination was limited to the particular projects at which the instant dispute arose (A. 22). See the Board's Memorandum of Points and Authorities in Opposition to Union-Intervenors' Motion to Dismiss the Case as Moot, filed October 23, 1968. The Court, on November 15, 1968, ordered that the motion of Union intervenors to dismiss this case as moot "be held in abeyance pending argument on the merits of this case."

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of Section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted or agreed upon methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

These sections, as applicable to the facts of this case, render unlawful strikes or inducements to strike aimed at forcing the reassignment to one group of employees of work already assigned to members of another group of employees. Thus, a violation of Section 8(b)(4)(i)(ii)(D) contains two elements (1) the labor organization must, under subsection (i) and (ii) induce or encourage a strike, or threaten, coerce or restrain any person engaged in commerce; and (2) an object of the conduct must be to force an employer to reassign work from employees in one labor organization to those in another.

There is no dispute in this case that Plasterers have resorted to conduct falling within the proscription of Section 8(b)(4)(i)(ii)(D), see *supra*, pp. 5-6. Petitioner, however, seeks to avoid the legal sanctions of the Act by claiming that (1) the Board was without jurisdiction to hear and determine the dispute under Section 10(k) because the two unions had agreed upon a voluntary method of adjusting the dispute, the employers assent to the agreement not being required under that section; and (2) that the Board's determination on the merits of the dispute was erroneous (Pl. br. pp. 13-14). Since the Act does not provide for direct judicial review of

a Board Section 10(k) work assignment, the only stage at which the losing party in that proceeding can challenge the Board's work award is in a review proceeding such as this of a subsequent Section 8(b)(4)(D) unfair labor practice order. *New Orleans Typographical Union No. 17 v. N.L.R.B.*, 368 F.2d 755, 762 (C.A. 5, 1966). As we show *infra*, since the employer is a party to the dispute within the meaning of Section 10(k), the Board was empowered and directed by that Section to determine the dispute, since neither Texas State nor Martini had agreed to be bound by the Joint Board. We further show that the Board's determination in the Section 10(k) proceeding is valid and proper and, accordingly, Plasterer's admitted inducements and threats against the two employers to reassign the disputed work to employees represented by Plasterers violated Section 8(b)(4)(i)(ii)(D) of the Act.

**B. The Board has interpreted and applied Section 10(k) of the Act in accordance with congressional intent**

Although Section 10(k) clearly requires that the "parties" to the jurisdictional dispute must "submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute," Plasterers contends (Pl. Br. 14-29) that the only "parties" to the dispute within the meaning of the statute are the competing unions and that, therefore, the employer's refusal to participate in the "voluntary adjustment" is irrelevant. As we show below, this contention finds no support in any court decision, is contrary to the wording and the reasons for the enactment of that provision, and is contrary to a long line of Board decisions, beginning with the first decision under Section 10(k).

It would seem beyond question that the employer who has assigned work to a group of employees, who is pressured to force him to reassign

the work to another group, and who resists that pressure in the jurisdictional dispute, is one of "the parties to such dispute" within the literal terms of Section 10(k). In *Lodge 68 of the International Assn. of Machinists (Moore Drydock Company)*, 81 NLRB 1108 (1949), and in *Int'l Longshoremen's and Warehousemen's Union (Juneau Spruce Corp.)*, 82 NLRB 650 (1949) the first cases to come before the Board under this section, the issue was raised as to the effect of the employer's involvement in the dispute. The Board majority rejected the position, put forward by dissenting Member Houston, that Section 10(k) applied only where "the employer occupies a neutral position and is indifferent as to which of the labor organizations involved in the controversy performs the work." (*Moore Drydock*, 81 NLRB at 1114, 1128). In other words, the Board recognized that an employer could become a party to the dispute, but held that his entry into the lists did not alter the procedural requirements of Section 10(k). As a consequence, the Board has consistently held that all "parties" to the jurisdictional dispute, — that is, the disputing unions and the employer responsible for the assignment of the disputed work — must agree to be bound by the voluntary method for adjustment in order to preclude the Board's determining the dispute under the Section 10(k) proviso.<sup>18</sup>

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<sup>18</sup> *United Brotherhood of Carpenters, etc., Local 581 (Ora Collard)*, 98 NLRB 346, 348-349 (1952); *Int'l Union of Operating Engineers (Empire State Painting Co.)*, 99 NLRB 1481, 1484-1486 (1952); *International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Pittsburgh Plate Glass Co.)*, 125 NLRB 1035, 1038-1039 (1959); *United Assn. of Journeymen and Apprentices of the Plumbing and Pipe-fitting Industry of the United States and Canada*, 108 NLRB 186, 197 (1954); *Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (General Riggers and Erectors, Inc.)*, 127 NLRB 26, 29 (1960); *Newspaper and Mail Deliverers' Union (News Syndicate Co.)*, 141 NLRB 578, 580 (1963); *International Union of Operating Engineers, Local 66 (Frank P. Badolato & Son)*, 135 NLRB 1392, 1395-1396 (1962); *Local 173, Wood, Wire and Metal Lathers' International Union, AFL-CIO (Newark and Essex Plastering Co.)*, 121 NLRB 1094, 1103-1104 (1958); *Bay Counties District Council of Carpenters, Inc.*, 115 NLRB 1757, 1766-1767 (1956); *Local 450*, (cont'd)

In addition, the courts of appeal which have adverted to this issue have reflected the Board's view. See, *N.L.R.B. v. Local 825, International Union of Operating Engineers, AFL-CIO (White Construction Co.)*, 410 F.2d 5, 9, n. 2 (C.A. 3, 1969) (citing the instant case); *New Orleans Typographical Union No. 17 v. N.L.R.B.*, 368 F.2d 755, 763 (C.A. 5, 1966); *N.L.R.B. v. Local 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric Co.)*, 326 F.2d 213, 216 (C.A. 3, 1964); *Local 450, International Union of Operating Engineers, AFL-CIO (Sline Industrial Painters) v. Elliott*, 256 F.2d 630, 636 (C.A. 5, 1958). See also, *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 264 (1963), citing *Wood Wire & Metal Lathers Union*, 119 NLRB 1345, 1347 (1958).

Moreover, the Board's conclusion is in harmony with the Statutory scheme. Thus, the employer directly involved in the work assignment dispute is almost invariably the charging party in the unfair labor practice proceeding under Section 8(b)(4)(D) which gives rise to the Section 10(k) proceeding,<sup>19</sup>

(Footnote 18 continued)

*International Union of Operating Engineers (Sline Industrial Painters)*, 119 NLRB 1725, 1731 (1958), enforced, 275 F.2d 408 (C.A. 5, 1960); *Local 825, Int'l Union of Operating Engineers (Nichols Electric)*, 137 NLRB 1425, 1428-1429, (1962) enforced, 326 F.2d 213 (C.A. 3, 1964); *Local 964, United Brotherhood of Carpenters (Carleton Bros.)*, 141 NLRB 1138, 1142 (1963); *Local 68, Wood, Wire & Metal (Lathers, etc. Acoustics & Specialties, Inc.)*, 142 NLRB 1073, 1076 (1963); *Local 825, Int'l Union of Operating Engineers (Schwerman Co. of Pa., Inc.)*, 139 NLRB 1426, 1429 (1962); *Carpenters District Council of Denver Inc. (J.O. Veteto & Son)*, 146 NLRB 1242, 1245 (1964); *Electrical Workers, Local 26, etc. (McCloskey & Co.)*, 147 NLRB 1498, 1501-1503 (1964); *Carpenters Local Union No. 1622 (O.R. Karst)*, 139 NLRB 591, 594 (1962); *Operative Plasterers Local No. 65, (Twin City Tile & Marble Co.)*, 152 NLRB 1609 (1965); *Local 300, United Assn. of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (D'Annunzio Bros., Inc.)*, 155 NLRB 836 (1965).

<sup>19</sup> In all but two of the Section 10(k) proceedings listed, *supra*, n. 18, (*Bay Counties District Council of Carpenters*, 115 NLRB 1757 (1956) and *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada*, 108 NLRB 186 (1954), where the charges were filed by one of the contending unions), the charges were filed by the affected employer.

and as charging party would have a right to intervene in the court proceedings with respect to that charge because it "may have vital 'private rights.'" *Scofield v. N.L.R.B.*, 382 U.S. 205, 220 (1965). In addition, the issues raised in jurisdictional disputes are closely related to representational issues which an employer can raise by petition for an election or for clarification of a certification. *Carey v. Westinghouse Electric Corp.*, *supra*, 375 U.S. at 266-267. Finally, the Section 10(k) proceeding may be arrayed against a contract arbitration suit under Section 301 involving the same dispute, in which the employer is a necessary party. *New Orleans Typographical Union*, *supra*, 368 F.2d at 763. It would seem anomalous, therefore, to regard the employer who resists the reassignment of the work as an irrelevant figure on this crucial occasion alone.

More broadly stated, the overall goal of the Act is the preservation of industrial peace through the orderly resolution of all disputes. Employer acceptance of the "voluntary adjustment" is a prerequisite of final resolution of the dispute, because an employer does not commit an unfair labor practice by ignoring the award made under Section 10(k). Indeed, this consideration was the basis for Member Houston's position, discussed, *supra*, p. 15, that no proceeding under Section 10(k) should be attempted if the employer was not indifferent as to which union was awarded the work. Securing the employer's participation in the dispute-settlement phase enhances the likelihood not only that he will accept the result, but also that a full record will be made, because of the employer's special knowledge of relevant factors.<sup>20</sup> Since participation in Joint Board proceedings obligates the employer to accept the award, and since, as discussed, *infra*, pp. 22-23, the "job ownership" criterion employed by the

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<sup>20</sup> See Atleson, "The NLRB and Jurisdictional Disputes: The Aftermath of CBS," 53 Georgetown Law Journal 93, 111 (1964).



Joint Board — to the virtual exclusion of considerations of economy and efficiency — apparently has made employers reluctant to accept its jurisdiction, Joint Board proceedings often fail to secure this advantage.<sup>21</sup>

As noted, *supra*, p. 15, the Agency's interpretation of the term "parties" in Section 10(k) has been consistent and unvarying during the 20 years prior to the present Board decision that the provision has been in the Act. It is settled that the contemporaneous construction of a statute by the agency charged with its administration and enforcement is entitled to great weight by the courts. *F.T.C. v. Mandel Bros.*, 359 U.S. 385, 391 (1959); *N.L.R.B. v. Coca-Cola Bottling Co.*, 350 U.S. 264, 269 (1956); *United States v. Public Utilities Commission of California*, 345 U.S. 295, 314-315 (1953); *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965); *West Texas Utilities Co. v. N.L.R.B.*, 87 App. D. C. 179, 181, 184 F.2d 233, 235 (1950), cert. denied, 341 U.S. 939; *Union Mfg. Co. v. N.L.R.B.*, 95 App. D. C. 252, 221 F.2d 532, 536 (1955), cert. denied, 349 U.S. 921, and cases there cited. "Such specific and established administrative interpretation of the statute \* \* \* 'should not be overruled except for weighty reasons.'" *Commissioner v. Estate of Sternberger*, 348 U.S. 187, 199 (1955).

Moreover, as early as 1950, this interpretation was set forth in several annual reports which the Board submitted to Congress.<sup>22</sup> While Congress on several occasions considered changing the Board's interpretation

<sup>21</sup> See Note, "The NLRB and Deference to Arbitration." 77 Yale L.J. 1191, 1200-1201 (1968).

<sup>22</sup> See, e.g., *Fourteenth Annual Report of the National Labor Relations Board* (G.P.O., 1950), pp. 99-102; *Seventeenth Annual Report of the National Labor Relations Board* (G.P.O., 1953), pp. 193-194; *Twentieth Annual Report of the National Labor Relations Board* (G.P.O., 1956), p. 118; *Twenty-first Annual Report of the National Labor Relations Board* (G.P.O., 1957), p. 119; *Twenty-third Annual Report of the National Labor Relations Board* (G.P.O., 1959), pp. 101-102; *Twenty-seventh Annual Report of the National Labor Relations Board* (G.P.O., 1963), p. 177.

of the Act which was later overruled in *CBS*,<sup>23</sup> no change was proposed with respect to the interpretation under review here.<sup>24</sup> In 1959, when Congress enacted extensive revisions to the Act – amending Sections 10(j) and 10(l) as well as 8(b)(4) – no change was made in either the procedural or substantive provisions respecting jurisdictional disputes. Moreover, prior to the adoption of what is now Section 8(f) – which permits prehire agreements in the building and construction industry – Congress considered a bill (S. 748 and H.R. 3540) which would have allowed the Board to certify unions in the building and construction industry without an election and which was resisted on the ground that it would alter the currently successful operation of the Joint Board under Section 10(k).<sup>25</sup> Under these circumstances it is a fair assumption that Congress accepted the construction placed on Section 10(k) by the Board. *N.L.R.B. v. Gullett Gin Co.*, 340 U.S. 361, 366 (1951).<sup>26</sup>

<sup>23</sup> *N.L.R.B. v. Radio and Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO (Columbia Broadcasting System)*, 364 U.S. 573 (1961). The Board had held that it was not required by Section 10(k) to make an affirmative award of the work.

<sup>24</sup> See Hearings before the Committee on Labor and Public Welfare (1949), U.S. Senate, on S. 249, 81st Cong., 1st Sess., pp. 10-11, 25-26, 122-125; Hearings before the Committee on Labor and Public Welfare, U.S. Senate, on Proposed Revisions of the Labor-Management Relations Act, 1947, 83rd Cong., 1st Sess., pp. 619, 1330, 1348, 2049-2051, 2072-2074, 2088, 2127-2128, 2428-2431 (1953).

<sup>25</sup> See I Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 84, 147-148, 619, 678-679, 858; II Legis. Hist. (1959) 1578(2), 1643, 1666, 1684-1696, 1718).

<sup>26</sup> As *Plasterers* notes (Br. 27-28), the Supreme Court rejected a similar contention in *CBS*. In so doing, however, the Court observed: "In the ordinary case, this argument might have some weight. But an administrative construction adhered to in the face of consistent rejection by Courts of Appeal is not such an ordinary case. Moreover, the Board had a regulation on this subject from 1947 to 1958 which the Court of Appeals for the Seventh Circuit thought, with some reason, was wholly inconsistent with the Board's present interpretation. [footnote omitted]. With all this uncertainty surrounding the eventual authoritative interpretation of the existing law, the failure of Congress

(cont'd)



In attacking the Board's interpretation, the Union relies (Pl. Br.) mainly on statements by Senators Morse (II Legis. Hist. (1947), p. 1554) and Murray (*ibid.*, p. 1046) as legislative history. These statements — that the jurisdictional disputes should be settled “between the two unions involved” or by the two unions “within their own ranks” — clearly were not addressed to the point in issue here. Moreover, both statements were based on the earlier draft of the bill. Senator Taft later offered an amendment<sup>27</sup> which added the categories of employees “in a particular trade, craft, or class” to the category of employees “in a particular labor organization” in the definition of the competing groups — that is, as enacted, the section was not simply concerned with jurisdictional disputes between “unions”, although this is the natural shorthand expression when the precise definition of the participants is not in issue (see Pl. Br. 18-21).<sup>28</sup> In addition, the conference committee deleted the provision for an arbitrator and provided that the Board was “directed” as well as “empowered” to decide the dispute.<sup>29</sup> Thereafter, Senator Morse strenuously objected to the bill as presented for enactment on the ground that the Board should not be interjected into these disputes (II Legis. Hist. (1947) 1555), Senator Murray objected to the enlargement of the scope of the section beyond disputes between “unions” (*ibid.*, 1575, 1579), and both voted

(Footnote 26 continued)

to enact a new law simply will not support the inference which the Board asks us to make.” 364 U.S. at 585. As noted in the text and, *supra*, pp. 15-16, the instant interpretation differs sharply from that considered in *CBS*, with respect to both the clarity of the Board's position and the acceptance of that position by the Courts.

<sup>27</sup> See H.R. 3020, I Legis. Hist. (1947) 226, 241; I Legis. Hist. (1947) 511; see also, n. 34, *infra*, p. 23.

<sup>28</sup> Indeed, the first jurisdictional dispute case to come before the Supreme Court, *Int'l Longshoremen's and Warehousemen's Union v. Juneau Spruce Corp.*, 342 U.S. 237 (1952), did not involve a dispute between “two unions.”

<sup>29</sup> S. 858, II Legis. Hist. (1947) 987; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 57, I Legis. Hist. (1947) 561.

against the final version of the Taft-Hartley Act (*ibid.*, 1621). Thus, the amendments to a significant degree changed the provisions which Senators Morse and Murray were describing. Indeed, a different interpretation was placed on the term "jurisdictional strike" by Senator Ellender, a member of the majority, who characterized it as "the refusal by one union to continue at work, unless certain operations *which the employer thinks* lie within the terms of a contract with another are given to the first union." II Legis. Hist. (1947), p. 1056. (Emphasis supplied.)

Plasterers notes (Br. 28-29) that even where a union brings strike pressure but either the union claiming the work or the one performing it immediately and effectively renounces any claim to the work, the Board will quash the proceedings under Section 10(k). See, *Local 1905, Carpet, Linoleum & Soft Tile Layers (Southwestern Floor Co.)*, 143 NLRB 251, 255-256 (1963), and cases cited at n. 7. Plasterers argues that these cases are anomalies in view of the Board's broader policy of requiring employer participation in the dispute settlement. We submit, however, that the Board is thus giving the maximum scope to the unions' voluntary settlement consistent with the Board's broader responsibilities under the Act discussed, *supra*, pp. 16-19. Thus, it is only when the dispute is protracted that the Board follows its regular proceedings under Section 10(k).<sup>30</sup>

Plasterers also contend (Br. 31-34) that a statistical analysis shows that the Board's decisions too frequently affirm employers' work assignments and hence that the Board has not fully responded to the Supreme Court's

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<sup>30</sup> Compare, *New Orleans Typographical Union No. 17 v. N.L.R.B.*, *supra*, 368 F.2d at 767:

When the union struck to enforce the work assignment it removed the controversy from the field of private contractual rights into the higher ambit of public rights.

decision in *CBS*, *supra*, which required the Board to make an affirmative assignment of the disputed work.<sup>31</sup> The Court was there concerned, however, not with the Board's failure to reverse employers, but with its failure to use its statutory power, and unquestionably the Board is no longer subject to criticism in this respect as it makes affirmative awards. Moreover, the Board is clearly entitled to give substantial weight to economic factors, as it does. Thus, the Board's award and the employer's assignment will often coincide, for employers tend to continue established practices in the absence of a substantial reason for change. Accordingly, jurisdictional disputes tend to arise where the employer is making an initial assignment of new work or a different assignment of old work, both instances in which substantial economic factors are likely to dictate his choice. In addition, the Board avowedly considers the employer's assignment as a factor and makes it determinative where the other factors are balanced, but this result was clearly contemplated by *CBS*. See, 364 U.S. at 382.<sup>32</sup>

Implicit in the Union's argument, therefore, is the contention that the Board should have adopted, not the criteria set out, *infra*, p. 24, but the criteria used by the Joint Board, which seek to give effect to the "job ownership concept of each craft."<sup>33</sup> In *CBS*, however, the Court observed

<sup>31</sup> For example, Plasterers asserts (Br. 32, 34) that in 1967, the Board's award altered the employer's work assignment in 15.1 percent of the cases, while during that period the Joint Board altered the employer's work assignment in 79.5 percent of its cases.

<sup>32</sup> See also, Atleson, *supra*, n. 20, 53 Georgetown Law Journal at 117.

<sup>33</sup> O'Donoghue, "Jurisdictional Disputes in the Construction Industry," 52 Georgetown L.J. 314, 324 (1964).

The plan for Settling Jurisdictional Disputes Nationally and Locally (Exh. A to the Trades Department's brief), lists as the criteria for job decisions: "Decisions and agreements of record as set forth [in an attachment], valid agreements between affected International Unions attested by Chairman of the Joint Board, established trade practice and prevailing practice in the locality." (Art. III, Section 1(a)). The Procedural Rules of the Joint Board (Exh. B to the Trades Department's brief), however,

that in developing criteria the Board could draw not only on its "knowledge" of standards used under private agreements, but also the Board's own "long experience in hearing and disposing of similar labor problems." 364 U.S. at 583. What the Board was enjoined to use, moreover, was neither one nor the other, but "experience and common sense" (*ibid.*) The Board's use of the Joint Board's concept of "job ownership . . . of each craft" would create obvious difficulty in avoiding conflict with Section 8(a)(3) and 8(b)(2) of the Act. The Supreme Court recognized this difficulty, but expressed confidence in the Board's ability to devise means of discharging its duties under Section 10(l) "in a manner entirely harmonious with those sections." *CBS, supra*, 364 U.S. at 584.<sup>34</sup> Accordingly, the contention that the Board should follow the Joint Board in this connection was expressly rejected in *N.L.R.B. v. Local 25, IBEW*, 396 F.2d 591, 593-594 (C.A. 2, 1968).

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(Footnote 33 continued)

state that the "Joint Board should not ignore the interests of the consumer in settling jurisdictional disputes but should give due regard to such factors as efficiency and economy of operation" (Job Decision Rule 13). Obviously, these provisions subordinate considerations of efficiency to those of trade practice.

<sup>34</sup> See also, Senator Taft's comment on the change discussed, *supra*, p. 20;

It is contended that the addition of the condition [sic] "another trade, craft, or class" has transformed this sub-section into what started to be a prohibition of jurisdictional strikes into a prohibition preventing one union from striking even though no other union was in the picture. I have no hesitation in saying that this subsection applies not only to strikes over the assignment of particular work to one union rather than another, but also to the assignment of work to one union rather than another group of employees. It is submitted, however, that this is not a proper criticism of this section since under the \* \* \* Act at the present time an employer would be violating subsection 8(3) if he discharged or discriminated against some employees merely to provide work to members of a union. [II Legis. Hist. (1947) 1624.]

C. The Board's function under Section 10(k) and the standard of review

In *N.L.R.B. v. Radio and Television Broadcast Engineers (C.B.S.)*, *supra*, the Supreme Court held that Section 10(k) requires the Board to determine the merits of the dispute by affirmatively deciding which group of employees is entitled to the disputed work, and that such determination necessarily involves a wide degree of discretion and expertise in an area where the Board's "powers . . . are broad and lacking in rigid standards to govern their application." *Id.*, at 583.

In following the Supreme Court's mandate, the Board has recognized that there are no rigid rules to govern its determination, but rather that Section 10(k) is to be given content through the empiric processes of administration. Accordingly, in *Int'l Assn. of Machinists, Lodge 1743 (Jones Const. Co.)*, 135 NLRB 1402 (1962), a case coming to the Board shortly after the *CBS* decision, the Board adopted the following approach to the task of specifically rendering affirmative awards in jurisdictional disputes (135 NLRB 1410-1411):

At this beginning stage in making jurisdictional awards as required by the Court, the Board cannot and will not formulate general rules for making them. Each case will have to do decided on its own facts. The Board will consider all relevant factors in determining who is entitled to the work in dispute, *e.g.*, the skills and work involved, certifications by the Board, company and industry practice, agreements between unions and between employers and unions, awards of arbitrators, joint boards and the AFL-CIO in the same or related cases, the assignment made by the employer, and the efficient operation of the employer's business.

The practice of weighing "all relevant factors" has been approved by the courts of appeals. See, e.g., *N.L.R.B. v. Local 25, IBEW*, 396 F.2d 591 (C.A. 2, 1968); *N.L.R.B. v. Local 825, Int'l Union of Operating Engineers*, 326 F.2d 213, 217 (C.A. 3, 1964); *N.L.R.B. v. Teamsters, Local Union No. 631*, 403 F.2d 667, 673 (C.A. 9, 1968); *New Orleans Typographical Union No. 17 v. N.L.R.B.*, 368 F.2d 755 (C.A. 5, 1966); *N.L.R.B. v. Int'l Die Sinkers' Conference*, 402 F.2d 407 (C.A. 7, 1968). Furthermore, the courts have recognized that the governing standard of judicial review must necessarily be whether or not the Board has abused its discretion — that is, whether the Board has been arbitrary or capricious — in making a particular work assignment. *N.L.R.B. v. St. Louis Printing Pressmen and Assistants Union No. 6, Inc.*, 385 F.2d 956, 960 (C.A. 8, 1967); *N.L.R.B. v. Local 25, IBEW, supra*, 396 F.2d at 594. This is implicit in the Supreme Court's emphasis in *CBS* that Congress has, in Section 10(k), committed to the Board a task which necessarily involves a wide degree of discretion. For the Board's function under Section 10(k) is analogous to its function under Section 9(b) of the Act, which commits to the Board the authority to determine in each case the unit appropriate for the purpose of collective bargaining. *N.L.R.B. v. St. Louis Printing Pressmen, supra*, 385 F.2d at 960 (collecting cases). The courts have recognized that, in exercising that authority, the Board's discretion is very broad. As the Supreme Court stated in *N.L.R.B. v. Packard Motor Car Co.*, 330 U.S. 485, 491 (1947):

"The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by statute, and none should be by decisions. It involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed."<sup>35</sup>

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<sup>35</sup> Accord: *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 165-166 (1941); *N.L.R.B. v. Hearst Publications, Inc.*, 322 U.S. 111, 132 (1944); *May Dep't Stores v. N.L.R.B.*, 326 U.S. 376, 380 (1945).

Accordingly, the question presented is whether or not the Board's Section 10(k) assignment of the work in dispute to employees represented by Tile Setters is arbitrary or capricious.

**D. The Board's determination was neither arbitrary or capricious**

Consistent with its decision in *Jones Construction Co., supra*, the Board weighed several factors in determining which of the competing groups of employees should be assigned the work in dispute in this case.

Although there have been no Board certifications bearing on this work in dispute, both Texas State and Martini, through their delegation of bargaining authority to Tile Contractors Association of America, Inc., and to Tile, Marble and Terrazzo Contractors of Houston, Texas, are parties to a collective bargaining agreement with Tile Setters, which specifically governs the type of work in dispute, *i.e.*, "The application of a coat or coats of mortar, prepared to a proper tolerance to receive tile on floors, walls and ceilings regardless of whether the mortar coat is wet or dry at the time the tile is applied to it" (A. 18 and p. 4, *supra*, n. 3). Conversely, neither Texas State nor Martini has an agreement with Plasterers, and Texas State employs no plasterers (A. 18; 145, 147, Tr. 152-153). While Martini on occasion has hired plasterers for this type of work, the plasterers have always been under the direct supervision of a tile setter (A. 18; 130). Thus, the Board's assignment of the work to the tile setters was consistent with the employers' collective bargaining agreement with Tile Setters.<sup>36</sup> The Board's practice of treating as a relevant factor in its decisions contracts which govern the particular work in dispute has

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<sup>36</sup> Martini testified that it had better control of the quality of the work of a craft with which it has a collective bargaining agreement (A. 131).



received court approval. See, for example, *N.L.R.B. v. Local 1291, Int'l Longshoremen's Ass'n.*, 368 F.2d 107, 110-111 (C.A. 3, 1966), cert. den., 386 U.S. 1033; *New Orleans Typographical Union, supra*, 368 F.2d at 763.<sup>37</sup>

The Board also considered employer, area, and industry practice. As already indicated, it is almost the universal practice of the employers here to use tile setters to perform the disputed work. Little evidence was introduced with respect to industry practice and, accordingly, the Board found this evidence to be inconclusive (A. 19). Evidence of area practice favoring both crafts was introduced (A. 19; 145, 129, 182, 95-96, 266, 199, 251-252, 268-269, Tr. 507).<sup>38</sup> The Board concluded that while the weight of numbers favored the Plasterers' claim in this respect, this factor was outweighed by other factors favoring the claim of Tile Setters, and that the assignment here was not inconsistent with area or industry practice (A. 19).<sup>39</sup> Since the Board found other factors to be more persuasive, its refusal to give controlling weight to area practice does not "taint the Board's decision with arbitrariness or capriciousness." *N.L.R.B. v. St.*

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<sup>37</sup> Of course, where both unions have an arguable claim to the work through their respective contracts with the employer, little weight will be given to this factor. *N.L.R.B. v. St. Louis Printing Pressmen, supra*, 385 F.2d at 961; *CBS, supra*, 364 U.S. at 582.

<sup>38</sup> Several of the Plasterers' witnesses, however, were contradicted when they testified that on certain building projects they had performed work which was similar to the work in dispute in this case. Compare: A. 287 with A. 312 (Humble Garage); A. 228 with A. 312 (Texas Southern University Library); A. 267 with A. 269 (Bank of the Southwest Towers).

<sup>39</sup> In support of their claim to area practice, Plasterers rely on the testimony of plastering contractor Brueggeman who stated that in 99% of the cases where a brown coat was installed, it was installed by Plasterers (A. 199, Pl. Br., p. 45). Yet, when asked to name specific jobs, he admitted that it was difficult for him to recall whether the tile was installed in the conventional method (where a tile setter applied his setting bed over the brown coat) or in a thin-set method (where the setting bed was omitted) "because we take them up to the brown coat, and other than that I really don't follow through to know whether they are thin-set or conventional set after that." (A. 198-199).



*Louis Printing Pressmen, supra*, 385 F.2d at 962; *N.L.R.B. v. Local 1291, Int'l Longshoremen's Ass'n., supra*, 368 F.2d at 110-111.

Plasterers, however, rely heavily on a 1961 Texas Guide Specification, purportedly a joint product of the tile and plastering contractors' associations, in support of their contention that the tile contractors recognize that work of the kind in dispute here should be assigned to their craft (Pl. Br., pp. 12, 42-45).<sup>40</sup> We submit that little weight should be accorded this specification.

The preparation of this Guide was initiated at the instance of Texas Lathing and Plastering Contractors Association (TLPC) and a manufacturer of dry-set mortars.<sup>41</sup> Executive Director Strawn of the TLPC was unable to explain what role the Texas Ceramic Tile Contractors Association (TCTC) played in its preparation. Nor was he able to testify as to the activities of the tile contractors' committee which allegedly represented the viewpoint of the tile contractors (A. 190-191). Furthermore, neither he nor George Brueggeman who, as president of TLPC was active in the Guide's preparation, could testify as to whether the Guide was approved by the membership of the TCTC or even presented to them (A. 204-205, 218, 194-195, 191-192, 219).<sup>42</sup> These witnesses also admitted that the Tile

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<sup>40</sup> The Board did not "ignore" the Guide (Pl. br. pp. 38, 45); rather, it found evidence of industry practice to be "inconclusive" (A. 19).

<sup>41</sup> Charles Montgomery and William Love, manufacturers of L. & M. dry-set mortars, figure prominently in the preparation of these specifications. (See A. 366-377, 385, 188, 183-184, 138, 140-141, 111, 350.) It would obviously be to their interest if they could convince architects that their product was an adequate substitute for both the neat cement bonding agent and the setting bed.

<sup>42</sup> While Martini is currently vice-president of the TCTC and was formerly a member of its Board of Directors, there is no evidence that he acted in any official capacity in the organization at the time the Guide was prepared (A. 134). Rather, he testified that he was merely sent a copy of the Guide after it had been completed, and

Setters were not consulted in the Guide's preparation (A. 218, 192-194). The evidence simply indicates that the Guide was approved by the presidents of TCTC and TLPC (A. 194-195).<sup>43</sup> Accordingly, we submit that since the evidence fails to show that the Guide represented a consensus of the tile contractors or Tile Setters, Plasterers have not demonstrated why the Guide "should have been accorded substantial weight by the Board" (Pl. br. p. 44).

With respect to relative skills and efficiency of operation, the Board found that the employers were satisfied with the quality of the tile setters' work and the cost of employing them, and that their assignments were not inconsistent with these factors since neither craft could claim superiority in either regard (A. 19-20). Accord: *Operative Plasterers and Cement Masons, etc. (Twin City Tile & Marble Co.)*, 152 NLRB 1609, 1613 (1965).<sup>44</sup> The fact that the employers are satisfied with the

(Footnote 42 continued)

never personally approved it (A. 144). While G. Zambon, president of Texas State, was listed on TCTC's letterhead as a director in 1961, he testified that if he was a director he was elected without his knowledge and had attended only one meeting of this organization (A. 156) (Compare Pl. br., p. 44). Nor was there any showing that Zambon was on the Board when tentative agreement was reached on the Gui. between the presidents of the two contractors' associations (Pl. Exh. Nos. 20-N, 20-O).

<sup>43</sup> The approval of the Guide by the President of TCTC was at best tentative since it is required that the action of the Board of Directors be submitted to the membership for approval or disapproval (A. 134). As already indicated, there is no evidence that this requirement was satisfied (A. 194-195, 191-192, 219).

<sup>44</sup> Tile Setters witnesses claimed that tile setters have more skill than plasterers and that it was less costly to employ the former (A. 163-164, 106-107, 68-69). Some of Plasterers witnesses conceded that there was practically no difference in quality between the two crafts in performing the float coat operation (A. 96-97, 130, 142, 131, 146-147, 434-436). Both crafts have an apprenticeship program; Tile Setters apprentices have three years of on-the-job training under the supervision of a mechanic, most of which is devoted to learning how to apply the float coat (A. 163-164, 106-107, 68-69). See also, Occupational Outlook Handbook, Marble Setters, Tile Setters, and Terazzo Workers (United States Department of Labor, Bureau of Labor Statistics).

performance and cost of employing one of the crafts is, of course, a relevant factor to be considered by the Board. *N.L.R.B. v. Int'l Longshoremen's Union*, 378 F.2d 33, 36 (C.A. 9, 1967), cert. denied, 389 U.S. 1004; *N.L.R.B. v. Denver Photo-Engravers' Union No. 18*, 351 F.2d 67 (C.A. 10, 1965); *N.L.R.B. v. Local 25, IBEW, supra*, 396 F.2d at 594.

Finally, the Board considered the Green Book agreements between Tile Setters and Plasterers and the decisions of the Joint Board in the Anderson Library dispute, purportedly based on the Green Book agreements.<sup>45</sup> The Joint Board award, by its terms, did not apply to any other job but the library<sup>46</sup> and the Rainbo Bakery dispute was not submitted to the Joint Board (A. 15).

The 1917 Green Book agreement between the two crafts provided, in relevant part, that the plasterer "shall plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat which shall be put on by the Tilelayer to act as a bed for his tile" (A. 20; 432). A decision by the Joint Board in 1924<sup>47</sup> reaffirmed the original agreement (A. 20; 433). The Joint Board, on November 10, 1966, concluding that the work in dispute was governed by this 1917 agreement,

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<sup>45</sup> The "Green Book" refers to a compilation of agreements and decisions rendered affecting the building industry, together with the plan establishing the National Joint Board for Settlement of Jurisdictional Disputes ("Joint Board") (A. 430-433).

<sup>46</sup> As the award stated: "This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only" (A. 412).

<sup>47</sup> That decision, in part, reads as follows: "After reviewing the controversy in its various phases, the determination is reached that the agreement previously existing between the two organizations affords the most practical plan of adjustment. . ." (A. 433).

awarded the work to Plasterers (A. 20; 313-314).<sup>48</sup> On March 15, 1967, the Joint Board voted to "clarify" its prior decision, and again awarded the work in dispute to Plasterers (A. 20; 424-426). The Board, after considering the contentions of the two crafts with regard to the Joint Board award, concluded that it should not be accorded controlling weight (A. 20-21).

When, in 1917, the crafts agreed to this division of work as reflected in the Green Book agreement, the only known method of tile installation was the conventional method, consisting of a scratch, brown, and float coat and a bonding agent (A. 94). Accordingly, the 1917 agreement and 1924 decision affirming the agreement pertained only to the conventional three-coat method (A. 62-64, 213, Tr. 995-996). There is no agreement between the unions with respect to thin-set applications (A. 213).

The Joint Board's decision of November, 1966, and the clarification of March, 1967, by their terms, indicate that the award was governed by the 1917 agreement (Tr. 996). As stated by the Joint Board in its November, 1966 decision applying this 1917 agreement, the "tile setter shall apply the final setting bed for his tile." Much evidence was introduced by both crafts in an attempt to define "setting bed." Although some literature of various manufacturers of dry-set mortars and testimony of plastering contractors suggest that the setting bed is the 3/32" of dry-set bonding agent (A. 346, 349), as shown above, *supra*, p. 10, the dry-set bonding

<sup>48</sup> That decision, in part, reads as follows (A. 314):

"The work in dispute is governed by the agreement of August 22, 1917, and shall be assigned to plasterers, except that any coat to be applied wet the same day under tile shall be placed by tile setters. In the thin-set or adhesive method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar that is the scratch coat and plumb coat. The plasterers shall plumb, rod, and square all walls, rod and level all ceilings and the tile setter shall apply the final setting bed for his tile."

agent is a substitute not for the setting bed but, rather, for the neat cement bonding agent.<sup>49</sup> The dry-set mortar bonding agent may not serve the purpose of assuring that the wall is sufficiently plumb and true so that tile may be applied; nor may the bonding agent be applied in sufficient thickness to bring the wall out to the required dimensions (A. 104, 110-112, 158-159, 209). Rather, these functions are performed through the application of the setting bed, which is a coat of Portland cement mortar applied in sufficient thickness to provide a perfectly plumb and true base for the bonding agent and tile lest imperfections be reflected in the surface of the tile.

The Joint Board reasoned that since the work claimed by Plasterers served the "*primary* purpose of plumbing, rodding and squaring of walls to receive tile [it] shall be assigned to plasterers in accordance with agreement of record of August 22, 1917, and the decision of record of February 21, 1924" (A. 425-426) (emphasis added). However, as the evidence indicates, the brown coat serves only to provide a preliminary plumb and trueness.<sup>50</sup> Hence, by assigning the work to Plasterers, the Joint Board has transferred the function performed by the Tile Setters — that is, applying mortar to create a final plumb and true surface — to a different craft, and transformed

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<sup>49</sup> Plasterers' witness Brueggeman did not know that tile could not be applied directly to a conventional setting bed without a bonding agent (A. 224, 112). This lack of knowledge apparently led him to the erroneous conclusion that the dry-set bonding agent was a substitute for the setting bed rather than the neat cement bonding agent (A. 223).

<sup>50</sup> American Standards Specification, relied on by Plasterers (Pl. br., p. 43), permits a variation of  $\frac{1}{4}$ " in 8' from the required plane in the brown coat; no variation, however, is specified for the mortar setting bed (A. 315, 331-332, 324).

the brown coat into a setting bed.<sup>51</sup> In sum, then, the Joint Board award is apparently based on either one of two faulty premises — namely, that the brown coat serves to provide a final plumb and true surface, or that the dry mortar bonding agent alone may bring the brown coat into final plumbness and trueness.

Finally, the Joint Board award provides little guidance for the resolution of the instant work disputes. As indicated above, the only work remaining at the library when the picketing commenced was the application of a bonding agent and a coat or mortar (setting bed) over a scratch coat behind the handrails on the balustrades in the stairwells (A. 141, 45-46). There was insufficient room, however, to apply an intermediate coat of mortar between the scratch coat and setting bed. Thus, while the stairwell area required more than  $3/32''$  to  $1/8''$  of mortar to bring the wall out to the required plane dimensions, and hence a bonding agent alone would have been inadequate, there was, on the other hand, no room for a preliminary plumb coat because of the placement of handrail anchors (A. 34-35, 38, 40-41; 148, 208).<sup>52</sup>

Similarly, the division of work specified in the Joint Board awards had no applicability to the work performed at Rainbo Bakery. As previously indicated, *supra*, pp. 6, 10, the tile was applied with a dry-set mortar

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<sup>51</sup> In so doing, the Joint Board omitted the operation of scratching the brown coat as provided in the 1917 agreement. As indicated, *supra*, pp. 7-8, the scratching serves to assure a good mechanical bond with the setting bed. A dry-set bonding agent may not be applied to a scratched brown coat (A. 69-70, 206).

<sup>52</sup> The American Standards Specifications relied on by Plasterers (Br. 43), though suggesting that the leveling coat be included in the plastering division, does not specify that a preliminary leveling coat be applied unless "a mortar thickness of more than  $3/4''$  is required to build out to finished tile surface" (A. 332 (A-4.6), 330 (3-24(c))).

over a single coat of approximately  $\frac{1}{2}$ " of mortar which, in turn, was applied over metal lath nailed to the painted walls of the panning room (A. 15; 58). This one-coat method of tile installation is common in remodeling jobs (A. 127, 130-131, 64, 364, 363 (illus. 205)).

The award of the Joint Board assigns the setting bed to the tile setter if the tile is applied on the same day, and to the plasterer if the tile is applied thereafter.<sup>53</sup> At the Rainbo job, however, the owner requested that the mortar bed be applied as quickly as possible so as not to interfere with the baking operations and create dust and dirt (A. 137). Moreover, as at the Anderson Library, there was no room for a preliminary plumb coat. Martini had been instructed to keep the float coat as thin as possible. Had a preliminary plumb coat been applied, the conveyors which were situated close to the wall would have had to have been moved at great expense (A. 106, 121, 434).

In these circumstances, it is apparent that the coat of mortar applied in both jobs serve the primary purpose of producing a plumb and true setting bed upon which tile could be applied, rather than a preliminary leveling coat. Hence, the "functional" rationale of the Joint Board's March, 1967 clarification is inapplicable. What remains, then, is simply the Joint Board's reliance on the 1917 Green Book agreement which, as we have shown, would appear to require an assignment of the disputed work to Tile Setters. Accordingly, it is clear that the decisions of the Joint Board properly were not accorded controlling weight by the Board.

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<sup>53</sup> As a principle of general application, the Joint Board's division of work is shown by the record to be impractical and less efficient. Since the setting of tile is influenced by such factors as humidity, temperature, season of the year, type of tile, mix of the preceding coat, area where tile is to be installed, etc., the tile contractor may be unable to determine in advance whether or not the tile may be installed on the same day as the setting bed (A. 71-72, 180-181, 166-167, 100, 102, Tr. 566-567).



We submit that the Board's determination that the factors favoring assignment to tile setters outweigh those favoring assignment to plasterers represents a balanced and conscientious consideration of all of the factors presented and is neither arbitrary nor capricious, but is amply supported by the evidence. *N.L.R.B. v. Local 676, Int'l Bro. of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 376 F.2d 3, 5 (C.A. 3, 1967).

### CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for review should be denied and that a decree should issue enforcing the Board's order in full.

Respectfully submitted,

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National Labor Relations Board.

May 1969.



BRIEF FOR THE UNION INTERVENORS

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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 22,073**

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PLASTERERS LOCAL UNION No. 79, OPERATIVE PLASTERERS AND  
CEMENT MASONS INTERNATIONAL ASSOCIATION, AFL-CIO,  
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*  
TEXAS STATE TILE AND TERRAZZO CO., ET AL., *Intervenors.*

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On Petition for Review and Cross-Petition for Enforcement  
of an Order of the National Labor Relations Board

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On Petition for Review and Cross-Petition for Enforcement  
of an Order of the National Labor Relations Board

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**BRIEF FOR THE UNION INTERVENORS**

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**STATEMENT OF ISSUES PRESENTED**

The Union Intervenors believe the issues presented in  
this case are the following:

1. Whether this case should be dismissed as moot.<sup>1</sup>

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<sup>1</sup> The mootness question was originally raised in a motion to dismiss filed by the Union Intervenors on October 10, 1968. By an order dated November 15, 1968, the Court directed that "the aforesaid motion be held in abeyance pending argument on the merits of this case." The other issues set forth above were stipulated in the prehearing conference stipulation filed by the original parties to this case on August 6, 1968, prior to the date on which this Court granted the various intervenors leave to intervene.

2. Whether substantial evidence on the whole record supports the Board's finding that Plasterers Local Union No. 79 picketed the M. D. Anderson Library job with an object of forcing or requiring Texas Tile to change the assignment of the disputed work from its own employees, who were members of or represented by Tile Setters Local No. 20, to employees who were members of or represented by Plasterers Local Union No. 79.

3. Whether the Board's determination in the Section 10(k) proceeding that employees represented by Tile Setters Local No. 20 are entitled to the disputed work is valid and proper.

4. Whether the Board properly found that the employer controlling the work assignment, as well as rival unions, must approve and enter into a voluntary adjustment procedure in order to preclude a Board hearing and determination pursuant to Section 10(k) of the Act.

This case has not previously been before the Court under this title or any similar title.

#### **REFERENCES TO RULINGS**

The Board's Decision and Determination of Disputes under Section 10(k) of the Act, 29 U.S.C. § 160(k), is reported at 172 N.L.R.B. No. 23 and is found at page 11 of the Appendix. The Board's Decision and Order in the unfair labor practice phase of this case is reported at 172 N.L.R.B. No. 23, and is found at page 1 of the Appendix.

#### **STATEMENT OF THE CASE**

This case is before the Court on a petition to review and a cross-petition to enforce a Decision and Order of the National Labor Relations Board. The petitioner, Plasterers Local Union No. 79, Operative Plasterers and Cement Masons' International Association, AFL-CIO (hereinafter referred to as Plasterers), was the respondent before the Board.

The case arose as a result of two charges filed in January and March 1967, respectively, by Southwestern Construction Company (hereinafter referred to as Southwestern) and Martini Tile and Terrazzo Company (hereinafter called Martini). Each charge alleged in substance that the Plasterers had violated Section 8(b)(4)(D) of the National Labor Relations Act, 29 U.S.C. § 158(b)(4)(D), by engaging in picketing and related conduct with the object of forcing the assignment to members of the Plasterers of certain work which was then being performed by members of Tile, Terrazzo and Marble Setters Local No. 20 (hereinafter referred to as Tile Setters), one of the Union Intervenors herein.<sup>2</sup>

The two cases were consolidated, and the Board, in accordance with Section 10(k) of the Act, 29 U.S.C. § 160(k), conducted a hearing to determine which group of employees was entitled to the disputed work. On August 22, 1967, the Board issued a Decision and Determination of Disputes holding that the work should be performed by the Tile Setters. (A. 11-23) The Plasterers refused to advise the Board in writing that it would accept and abide by the Board's decision, and therefore the Board's General Counsel issued a complaint on the underlying unfair labor practice charges. On June 27, 1968, the Board issued a Decision and Order (A. 1-11) finding that the Plasterers had committed the violations alleged, and directing it to cease and desist from such violations. It is that Decision and Order which is now before the Court.

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<sup>2</sup> The other Union Intervenors are: Bricklayers, Masons, and Plasterers International Union of America (hereinafter referred to as Bricklayers), International Association of Marble, Slate and Stone Polishers, Rubbers & Sawyers, Tile & Marble Setters' Helpers & Marble, Mosaic and Terrazzo Workers' Helpers (hereinafter referred to as Helpers), and Local 108 of the Helpers. Bricklayers is the parent organization of Tile Setters Local 20, whose members were performing the work sought by the Plasterers. The Helpers Union was also interested in the dispute because its members work directly with the Tile Setters, and would be replaced by members of another organization (Laborers' International Union of America) if the disputed work were assigned to the Plasterers.

### **Nature and Background of the Jurisdictional Dispute**

The work which was the subject of the dispute in this case involved the application to walls of a coat of portland cement mortar (referred to by the Tile Setters as the "float coat" or "setting bed" and by the Plasterers as the "brown coat" or "plumb coat") on which tile was to be laid. The purpose of this float coat (as we shall refer to it in this brief) is to provide a proper backing for the installation of tile. It establishes the ultimate dimensions of the surface to be tiled, and determines the appearance of the finished job. Since tile is an inflexible material, the float coat on which it is to be applied must be absolutely level, so that the tile will lie flat and adhere properly to the wall. In addition, the float coat must be absolutely square and plumb, so that the tiles when they are applied will be straight and even, both horizontally and vertically. The float coat must also be so applied as to leave just the right amount of space for the particular type of tile to be installed, in order that the tile will properly meet door frames, window frames, and any fixtures in the wall. It is undisputed that the proper application of this coat requires great care and skill.

The Plasterers concede that if the tile is to be applied while the float coat is still somewhat wet or "plastic" then the application of the float coat is properly the work of the Tile Setters. They contend, however, that if the float coat is to be permitted to become dry and hard before the tile is laid, then the application of that coat should be performed by the Plasterers rather than the Tile Setters. The Tile Setters, on the other hand, consider the application of the float coat to be an integral part of the 'Tile Setters' craft, irrespective of whether the tile is to be applied while the float coat is wet or dry.

This controversy is the result of certain recent developments in the techniques for the installing of tile. Prior to the mid-1950's, tile was generally affixed to the float coat with a bonding agent of "neat cement" (pure portland



cement and water) which would either be "battered" onto the back of the tile or spread thinly on the float coat immediately before the tile was applied. In order for this method to work properly, the tile had to be soaked before it was applied, and it was also the general practice to apply the tile while the float coat was still wet. This was done to assure that the tile and the float coat would not absorb too much moisture from the bonding agent before it could harden and form a firm bond.

In recent years, however, a number of "retardants" have appeared on the market, which, when mixed with portland cement, produce a bonding agent which resists excessive absorption of moisture. These retardants are marketed under various trade names such as Crest and L & M. A bonding agent which includes these new ingredients is sometimes referred to as a "dry-set mortar." The advantage of such a dry-set mortar is that it eliminates the need to soak the tile, and it allows the tile to be applied after the float coat has dried.

The introduction of the dry-set mortars has had two basic effects on the traditional methods of installing tile. First, a tile layer can now apply his float coat in several rooms, or throughout an entire building, before commencing to apply the tile itself; in the past, the tile had to be applied while the float coat was still wet, so a tile layer would generally complete only so much float coat as he could cover with tile the same day. (A. 66-67). Second, it is possible to use a dry-set mortar to apply tile to almost any surface, so that, in the interest of economy, tile is now sometimes applied directly to an existing surface (such as brick, cinderblock, dry-wall, etc.) without any float coat at all. This does not produce a first-rate job, since the tile will not be as straight and even in appearance as it would be when applied over a float coat, but it is used when cost considerations are paramount. The application of tile directly to a wall without use of a float coat is called the thin-set method. (A. 64-66).

Before the advent of the dry-set mortars, it was understood and accepted that the float coat would be applied by the tile layer, but that any preliminary coats which might be required would be applied by the plasterer. These preliminary coats are known in the trade as a "scratch coat" and a "brown coat," the latter sometimes being referred to as the "plumb coat." These coats are generally used when the wall to be tiled is not already in existence, and has to be constructed. In such a situation, the so-called "conventional method" is to erect wood or metal studs onto which metal lath is fastened, and then to apply a thin coat of portland cement (the scratch coat) to give the lath stiffness and rigidity. Over this, a second coat (the brown or plumb coat) is applied and finished to a preliminary square and plumb. Both the scratch coat and the brown coat are "scratched" or grooved with a sharp tool known as a scarifier, in order to assure a strong mechanical bond with the succeeding coat. Finally, the float coat would be applied, to provide the final setting bed for the tile. The float coat is never scratched, since it provides the surface to which the tile is to be applied, and must therefore be absolutely level, square and plumb.

When the wall to be tiled is already in existence, the scratch coat and brown coat are generally omitted, since their purpose is primarily to provide a backing for the float coat, and that purpose can generally be adequately served by the existing structure. In such a situation, metal lath is fastened over the existing wall, and the float coat is applied directly to the lath. This method is sometimes referred to as the "one-coat" method. (A. 64).

In 1917, the two unions involved in this case entered into an agreement which provides that the scratch coat and the brown coat are to be applied by the plasterer, and the float coat by the tile layer. The pertinent language of that agreement reads as follows:

"It is agreed that the plasterers . . . shall prepare or plaster all walls which are to receive tile. They

shall plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat which shall be put on by the Tilelayer to act as a bed for his tile." (A. 432).

Both the Tile Setters and the Plasterers rely on this agreement in support of their respective positions in the present dispute. The Tile Setters contend that the agreement recognized their right to apply the "final coat" which is to provide the backing or "bed" for his tile, irrespective of whether the tile is to be applied with neat cement or a dry-set mortar, or whether the tile is to be applied while the float coat is wet or after it has dried. They point out that the 1917 agreement specifically provides that the coats applied by the plasterer are to be scratched, which means that they cannot serve as the coat to which the tile is to be applied. The Plasterers, on the other hand, argue that if the float coat is allowed to dry, and the tile applied with a dry-set mortar, then the dry-set mortar itself constitutes the "final coat" which acts as the "bed" for the tile. In such a situation, the Plasterers contend, the preceding coat of portland cement is really not the equivalent of the float coat, but rather is the equivalent of the preliminary brown or plumb coat, even though it is not to be scratched. It is for that reason that the Plasterers, throughout this case (and in their brief to this Court), have referred to the disputed work as the "brown coat" or the "plumb coat" rather than the "float coat", and have referred to the dry-set bonding agent as the "setting bed".

#### **The Specific Events Which Gave Rise to the Present Case**

The particular dispute involved in the present case arose at two separate construction sites in Houston, Texas. One of those sites was the M. D. Anderson Library at the University of Houston, where Southwestern, a general contractor, was engaged in the construction of an addition to the building. Southwestern had engaged a subcontractor,

Texas State Tile and Terrazzo Company (hereinafter referred to as Texas Tile) to perform certain tile and terrazzo work, including the installation of quarry tile in the stairwells. (A. 38). The contract called for the application of a coat of portland cement mortar (i.e., a float coat) on which the tile was to be laid. The float coat, in this instance, was to be applied directly over a scratch coat which had already been applied by the Plasterers; there was to be no brown or plumb coat, because of lack of space. (A. 34-35, 40-41).

The other construction site involved in this case was the Rainbo Baking Company, where Martini had a contract for the installation of tile on existing brick walls in part of the baking area. The contract called for the application of a float coat, over metal lath, directly onto the existing wall. (A. 99).

Both Texas Tile and Martini are members of the Tile, Marble and Terrazzo Contractors of Houston, Texas, which has a local collective bargaining agreement with the Tile Setters. They are also members of the Tile Contractors Association of America, Inc., which has a national collective bargaining agreement with the Bricklayers, the parent organization of the Tile Setters. These agreements specifically define the work of the tile layer as including "The application of a coat or coats of mortar, prepared to proper tolerance to receive tile on floors, walls and ceilings and regardless of whether the mortar coat is wet or dry at the time the tile is applied to it." (A. 18, 429-30, 434). Accordingly, both of the contractors involved assigned the work of applying the float coat to employees represented by the Tile Setters.

The tile work on the M. D. Anderson job commenced in August, 1966. Later that fall, the Plasterers' business agent contacted Texas Tile and the Tile Setters and demanded that the work of applying the float coat be assigned to the Plasterers. (A. 49, 53-54). When that de-

mand was refused, the Plasterers submitted the matter to the National Joint Board for the Settlement of Jurisdictional Disputes (hereinafter referred to as the Joint Board), a tribunal established by an agreement between the Building Trades Department of the AFL-CIO and certain construction contractors. Neither Texas Tile nor the local or national associations with which it is affiliated have agreed to be bound by decisions of the Joint Board. (A. 14, 48). Nevertheless, the Joint Board took jurisdiction and issued a decision on November 10, 1966, stating:

"The work in dispute is governed by the agreement of August 22, 1917, and shall be assigned to plasterers, except that any coat to be applied wet the same day under tile shall be placed by tile setters. In the thin-set or adhesive method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar that is the scratch coat and plumb coat. The plasterers shall plumb, rod, and square all walls, rod and level all ceilings and the tile setter shall apply the final setting bed for his tile.

"This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only." (A. 313-14).

Since Texas Tile was not bound by this decision, it refused to abide by it. On January 24, 1967, the Plasterers picketed the M. D. Anderson job for the purpose of forcing Texas Tile to assign the work to Plasterers in conformity with the decision of the Joint Board. The picketing caused a general work stoppage by all the crafts working at the site. (A. 5). The general contractor, Southwest, then filed an unfair labor practice charge. Thereafter, the picketing was ultimately terminated by an injunction entered by the local federal court pursuant to Section 10(1) of the Act, 29 U.S.C. § 160(1), on February 10, 1967 (A. 14, 28-29).

At the Rainbo job the Plasterers also requested that the float coat be assigned to them, and, on March 17, 1967,

picketed the job for the purpose of forcing such a re-assignment of this work. (A. 57, 439). A brief work stoppage ensued, and Martini filed an unfair labor practice charge the same day. Work resumed the following week without further incident. (A. 14, 58). The Plasterers did not submit the Rainbo dispute to the Joint Board.

#### **The Board's Section 10(k) Determination**

In its Decision and Determination of Disputes (A. 11-23) issued pursuant to Section 10(k) of the Act, the Board rejected the Plasterers' contention that the Board lacked jurisdiction because the "parties" had agreed upon a "method for the voluntary adjustment" of the dispute within the meaning of the statute. In accordance with its established precedents, the Board held that the term "parties", as used in Section 10(k), refers to the employer as well as the unions involved in the controversy. Since none of the employers in this case had agreed to be bound by the Joint Board, the NLRB concluded that the dispute was subject to the statutory procedure.

On the merits, the Board held that the work in question had been properly assigned to the Tile Setters. It pointed out that the collective bargaining agreements of the Tile Contractors Association of America and the Tile, Marble and Terrazzo Contractors of Houston, Texas, to which both Texas Tile and Martini were bound, specifically provided that work of the kind involved in this case should be performed by the Tile Setters. On the issue of past practice, it found that the particular employers involved in this case always assigned this type of work to the Tile Setters, and that this was not inconsistent with general industry and area practice. The Board further found that both crafts were equally skilled in performing this kind of work, and that both could do it with equal efficiency.

The Board acknowledged that the Joint Board award, while not binding, was one factor to be considered, but held that, on the record as a whole, the Joint Board's de-

cision should not be given controlling weight. The Board also referred to the 1917 agreement, but expressed no view as to the proper interpretation of that agreement in the context of the present case.

Finally, the Board rejected a request made by the Tile Setters that its decision be made applicable nationwide or, at least, to the geographic areas in which the employers involved operate. The Board concluded that "the record will not support a finding, necessary for the granting of a broad order, that the disputes promise to recur between the parties." Accordingly, it limited its decision to the specific work involved in this case:

"1. Tile layers employed by Texas State Tile and Terrazzo, Inc., and Martini Tile and Terrazzo Company, who are represented by Tile, Terrazzo and Marble Setters Local Union No. 20, are entitled to perform the work (at the M. D. Anderson Library, University of Houston, and the Rainbo Baking Company, Houston, Texas, respectively) of applying the one coat or float coat of Portland cement mortar as backup material to receive tile.

"2. Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require Texas State Tile and Terrazzo, Inc., and/or Martini Tile and Terrazzo Company, to assign the above work to plasterers. (A. 22).

#### **The Board's Decision and Order**

The determination under Section 10(k) is only an intermediate step in a case of this kind, and does not result in the issuance of a final, enforceable order. If, as happened here, the union which was initially charged with the unfair labor practice does not agree voluntarily to accept the Board's Section 10(k) decision, a formal unfair labor practice complaint is issued and the case proceeds to hearing and decision.



The Board issued a Decision and Order in the unfair labor practice phase of this case on June 27, 1968. (A. 1-11). After summarizing the facts, and again rejecting the Plasterers' contention that the Board was required by Section 10(k) to honor the decision of the Joint Board, the Board concluded that the Plasterers' picketing activities had violated Section 8(b)(4)(D) of the Act. Accordingly, the Board issued a cease and desist order which, like its Section 10(k) decision, was applicable only to the particular work involved in this case. The Board's Order prohibits the Plasterers from engaging in picketing or similar action where the object is "to force or require Texas State Tile and Terrazzo, Inc., or Martini Tile and Terrazzo Company, to assign the work of applying to walls a coat of Portland cement mortar upon which tile is to be installed at the M. D. Anderson Library and Rainbo jobs, to employees represented by the Respondent rather than to employees represented by Tile, Terrazzo and Marble Setters Local Union No. 20, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO." (A. 9). In addition, the Order requires the Plasterers to post notices which state, in effect, that the Plasterers will abide by the terms of the Order. (A. 10-11).

## ARGUMENT

### I

#### THIS CASE SHOULD BE DISMISSED AS MOOT

Shortly after being granted leave to intervene in this proceeding, the Union Intervenors filed a motion to dismiss this case as moot. The other parties filed oppositions to that motion, and the Court, on November 15, 1968, ordered that the "aforesaid motion be held in abeyance pending argument on the merits of this case." For the reasons set forth below, we believe the Court should now grant the motion to dismiss, without reaching the merits of the case.



In most unfair labor practice cases, the Board issues a broad cease-and-desist order directing the respondent not only to stop the particular violation involved but to refrain from engaging in the same type of violation in the future. A proceeding to review or enforce that type of order does not become moot merely because the violation has discontinued, since there is always a possibility that a similar violation may recur in the future. See, e.g., *NLRB v. Mexia Textile Mills, Inc.*, 339 U.S. 563 (1950); *NLRB v. Crompton Mills*, 337 U.S. 217, 225 n. 7 (1949). In the present case, however, the Board did not issue this type of broad order. Instead, it simply directed the Plasterers to cease and desist from the specific violation which gave rise to this case—namely, picketing the particular employers involved in this case to force them to assign to the Plasterers the work of applying the “float” coat at the M. D. Anderson and Rainbo Bakery jobs.

The Board’s determination under Section 10(k) in this case was similarly limited. Indeed, the Board specifically rejected a request that it render a decision which would be applicable nationwide, or at least throughout the geographic area in which the case arose. It chose instead to issue a narrowly limited decision applicable only to the M. D. Anderson and Rainbo jobs.

It is undisputed that those jobs have now been completed. The float coat which was the subject of the dispute has now been applied and covered with tile at both locations. The question of which union should perform that work is therefore now entirely academic. And it is no longer possible for the Plasterers to violate the Board’s order, even if they wanted to do so.

There is simply no way in which the Plasterers could attempt to force the employers to reassign the work, since the work has been completed. Accordingly, the controversy involved in this case is entirely moot, and no purpose would be served by reviewing or enforcing the Board’s order.

It is not uncommon in jurisdictional-dispute cases for the specific work which gave rise to the dispute to be completed before the case has been finally adjudicated. In many cases, however, the Board finds that the work involved, and the dispute itself, are of a recurring nature. In such situations, the Board usually issues a determination which governs the assignment of future work of the type involved in the case. A common type of determination, for example, awards to one of the competing unions all work of the type in dispute which may occur within a specified geographical area. *E.g.*, *Local 48, Sheet Metal Workers*, 119 N.L.R.B. 157, 161-62 (1957); *Local 35, United Ass'n*, 125 N.L.R.B. 1, 5 (1959); *International Union of Operating Engineers*, 135 N.L.R.B. 1392, 1401-02 (1962); *Local 3, Int'l Bh'd of Elec. Workers*, 141 N.L.R.B. 888, 897-98 n. 12, 144 N.L.R.B. 1318 n. 1 (1963), *enforced*, 339 F.2d 145 (2d Cir. 1964); *Locals 224 and 830, United Ass'n*, 152 N.L.R.B. 902, 910-11 (1962). In each of the cited cases, the Board rejected the contention that the completion of the work involved rendered the controversy moot, holding that the dispute was likely to recur and that a determination should be made as to which union should perform the disputed work in the future.

On the other hand, in cases where, as here, the particular work in dispute had been completed, and the dispute was found unlikely to recur, the Board itself has refrained from issuing a decision on the merits. For example, in *International Union of Operating Engineers*, 144 N.L.R.B. 1351, 1357 (1963) the Board stated:

"We further find that the question of who should be assigned the work of operating temporary elevators in the Parkway Building for the purpose of hauling furniture is not properly before us. There are no more temporary elevators in the building, and the question is therefore moot."

See also *Local 525, Int'l Bh'd of Teamsters*, 140 N.L.R.B. 1156 (1963); *Millwrights and Machinery Erectors Local*

1102, 140 N.L.R.B. 79 (1962); *Panama City Building Trades Council*, 136 N.L.R.B. 1002 (1962).

In *Tip Top Roofers, Inc. v. NLRB*, 324 F.2d 773 (5th Cir. 1963) the Court affirmed a Board decision dismissing a complaint on the ground that "no affirmative order issued by the Board could have any effect on the parties to the original controversy since the work had long since been completed." The Court rejected the employer's contention that there should be a decision on the merits, holding that "such a course would be productive of no benefits to the parties involved . . . ." *Id.* at 774. See also *Quinn v. NLRB*, 61 L.R.R.M. 2690, 2691 (D.C. Cir. 1966) (concurring opinion of Judge Bazelon).

A closely analogous situation was presented in *Todd v. Joint Apprenticeship Committee*, 332 F.2d 243 (7th Cir. 1964), *cert. denied*, 380 U.S. 914 (1965). That case involved an action to compel the employment of Negroes on a construction project being performed for the federal government. By the time the case came before the Court of Appeals, the work in question had been completed, and the Court therefore dismissed the case as moot: "The subject matter of the litigation is no longer an actual controversy. The time for determination of the questions involved in this action has passed. No relief within the scope of the complaint could now be granted." *Id.* at 247.

Also directly in point is the decision of the Supreme Court in *Barker Painting Co. v. Local 734, Bh'd of Painters*, 281 U.S. 462 (1930), in which, after a preliminary injunction was issued against a strike at a construction project, the workers returned to work and completed the project. When the case was appealed, the Circuit Court refused to pass on the merits on the ground that the controversy had become moot. The Supreme Court, in an opinion by Mr. Justice Holmes, affirmed, even though both parties desired a decision on the merits.

As this Court has recognized, "it is clear that a request for injunction becomes moot where circumstances so change that no remedy can be granted affecting the substantial rights of the parties." *Reiter v. Universal Marion Corp.*, 273 F.2d 820, 824 (1959). That is precisely the situation here. The order of the Board, which the Plasterers seek to have set aside and the Board seeks to have enforced, can no longer affect any "substantial rights of the parties."

In their oppositions to the motion to dismiss, the Board and the Plasterers, relying on *International Union of Operating Engineers*, 144 N.L.R.B. 1351, 1357 n. 13 (1963), suggested that the order in the present case might still be applicable to any repair or alteration work which might someday be performed at the M. D. Anderson or Rainbo sites. This, however, is clearly a spurious argument. In the cited case, the Board expressly found that one of the competing unions had "claimed the work of operating the elevators even in the future, during such repairs or alterations as may occur." *Ibid.* In the present case, on the other hand, there was no evidence and no finding of any dispute between the parties over alteration or repair work. Indeed, it is difficult to conceive how there could be any alteration or repair work on a cement float coat which is covered with tile. The only issue which the Board decided in this case is which union should perform the original application of the float coat, and that work has now been completed.

Another argument which was advanced in opposition to the motion to dismiss was that the notice-posting provisions of the Board's order have not yet been carried out. But the notices which the Board prescribed in this case are merely ancillary to the cease-and-desist order. Those notices simply state that the Plasterers will not commit the violations which the order prohibits. Since it is now impossible for the Plasterers to commit those

violations, it obviously makes no difference whether the notices are posted or not.

The plain fact is that the only reason any of the parties have for continuing this litigation is that the decision herein might serve as a precedent in some future case. But it is not the function of a federal court to pass upon abstract questions of law solely because the parties may desire to establish a favorable precedent or reverse an unfavorable one. "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills v. Green*, 159 U.S. 651, 653 (1895). See also *Local 8-6, Oil, Chemical and Atomic Workers v. Missouri*, 361 U.S. 363 (1960); *Golden v. Zwickler*, 394 U.S. 103 (1969).

## II

### **IF THE COURT REACHES THE MERITS OF THIS CASE, IT SHOULD AFFIRM AND ENFORCE THE DECISION AND ORDER OF THE BOARD**

If the Court should hold, contrary to the contention we have made above, that this case is not moot even though the disputed work has been completed, then we would urge the Court to affirm the Board's decision and enforce its order.

The Plasterers have challenged the Board's decision on two grounds. First, they contend that the Joint Board agreement, to which the unions but not the employers in this case are bound, constitutes a "method for the voluntary adjustment" of the jurisdictional dispute which deprives the Board of jurisdiction to adjudicate that dispute under Section 10(k). Second, they argue that even if the Board had jurisdiction to issue a Section 10(k) determination, its decision to award the disputed work to

the Tile Setters was erroneous. We shall deal with each of these contentions in turn.

**A. The Joint Board Agreement Did Not Deprive the Board of Jurisdiction To Proceed Under Section 10(k) in the Circumstances of This Case**

Section 10(k) provides that when an unfair labor practice charge is filed under Section 8(b)(4)(D):

“the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. . .”

The Plasterers contend that the phrase “parties to such dispute,” as used in Section 10(k), refers only to the unions which are claiming the work in dispute, and not the employer or employers who control the assignment of such work. The Board, on the other hand, has consistently held that the term “parties” includes the employer, and that the Board is required to proceed under Section 10(k) unless there is a voluntary method of adjustment to which the employer as well as the unions involved are bound.

The Union Intervenors believe that, in the circumstances of this case, it is unnecessary for the Court to decide this broad legal question. In our view, the result which the Board reached in this case must be sustained irrespective of how the term “parties” as used in Section 10(k) is to be construed. For even if the Plasterers are correct in their contention that the Board should honor any voluntary inter-union machinery for the adjustment of jurisdictional disputes, the fact is that no such inter-union machinery existed in this case.

The Plasterers contend that the unions involved in this case, by virtue of their affiliation with the Building and Construction Trades Department of the AFL-CIO, are bound to submit their jurisdictional disputes to the Joint Board even in situations in which the employer controlling the work assignment is not a party to the Joint Board agreement. This argument, we submit, is based on a fundamental misconception of the nature and purpose of the Joint Board agreement. As its very name implies, the Joint Board is not an inter-union tribunal, but a union-employer tribunal. It exists and operates by virtue of an agreement entered into between the Building and Construction Trades Department, acting on behalf of its affiliated unions, and certain contractors' associations, acting on behalf of their members. Employers which are not members of the signatory associations are also permitted to become parties to the agreement by signing a stipulation to that effect.

The plain purpose of the Joint Board agreement is to provide a procedure for resolving those jurisdictional disputes which affect or involve the employers who are parties to the agreement. Thus, the agreement provides, among other things, that the employers will make their work assignments in accordance with the standards set forth in the agreement, as interpreted and applied by the Joint Board. In exchange for this commitment, the unions agree to refrain from engaging in jurisdictional strikes or picketing, and to submit their jurisdictional claims to the Joint Board for a final and binding decision.

There is nothing in the agreement, however, which requires the unions to submit to the Joint Board any jurisdictional disputes which do not involve employers who are parties to the agreement. Indeed, it would be anomalous for the Building and Construction Trades Department to enter into an agreement with a group of employers concerning the resolution of inter-union disputes



which do not involve or affect those employers at all. Obviously, if the construction unions wanted to establish their own inter-union machinery for resolving jurisdictional disputes, they would be free to do so, on their own, without involving the employers at all. But the Joint Board was established for an entirely different purpose, namely, to provide a settlement machinery which would be binding on the employers as well as the unions.

The Brief filed herein by the Building and Construction Trades Department explains in detail how the Joint Board operates. As that brief makes clear, employers participate at every stage and level of a Joint Board proceeding. They bring disputes before the Joint Board, they present arguments and evidence, they participate in the decision-making process, and they are bound by the final decisions reached. Plainly, this machinery was not designed to apply to a dispute which involves an employer who is not a party to the Joint Board agreement, and who is neither obligated nor willing to participate in its proceedings or comply with its decisions.

One of the principal advantages which the unions derive from the Joint Board agreement is that the decisions of the Joint Board are binding on the employers involved. It is highly doubtful, we submit, that the Building and Construction Trades Department would have ever agreed to establish a joint labor-management machinery for the resolution of jurisdictional disputes if the participating employers had not agreed to be bound by that machinery. It would therefore be both unrealistic and unfair to construe the Joint Board agreement as applicable to disputes involving employers who are not parties to the agreement, and to require unions to submit to the jurisdiction of the Joint Board in cases in which the employer controlling the work in dispute is not bound by the Joint Board's decision.

The Plasterers' argument that the dispute in the present case was subject to the jurisdiction of the Joint Board



appears to be based on Article X of the Constitution of the Building and Construction Trades Department, which provides as follows:

“All jurisdictional disputes between or among affiliated National and International Unions and their affiliated Local Unions and employers shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the future by the Department for the settlement of jurisdictional disputes. Said present plan or any other plan adopted in the future shall be recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions.”

This provision, we submit, does not advance the Plasterers' position at all. Its sole purpose and effect is to require all unions affiliated with the Department to be bound by whatever plan or method the Department may establish for the settlement of jurisdictional disputes. As we have seen, the only such plan presently in existence, the Joint Board agreement, is simply inapplicable to jurisdictional disputes which involve or affect employers which are not parties to that agreement.

In short, the question of whether the Board is required, in jurisdictional-dispute cases, to defer to any private adjustment machinery which is binding on the unions but not the employers involved is really not presented in this case at all. The fact is that there was no such machinery applicable to the dispute involved here. Thus, the Board had jurisdiction to adjudicate that dispute under Section 10(k) of the Act.

**B. The Board's Decision To Award the Disputed Work to the Tile Setters Was Well Within Its Statutory Discretion**

The brief for the NLRB, which has already been filed, contains a detailed and thorough defense of its Section 10(k) decision in this case. Since we are in substantial agreement with the Board's position, no purpose would

be served by repeating here the arguments already fully presented by the Board. Accordingly, we shall add only a few additional comments.

In an effort to cast suspicion on the integrity of the Board's decision in this case, the Plasterers' have mounted a broad-based attack on all the decisions which the Board has issued since the *CBS* case, *NLRB v. Radio & Television Broadcast Engineers*, 364 U.S. 573 (1961), in which the Supreme Court held that the Board has an affirmative duty under Section 10(k) to decide the merits of jurisdictional disputes. Prior to that decision, it was the Board's view that it was required to rubber-stamp any employer's work assignment which was not in violation of a contract or Board certificate. The Plasterers argue, in substance, that the fact that the vast majority of the Board's decisions since *CBS* still favor the employer's work assignment indicates that the Board is only pretending to exercise an "independent judgment" as required by the *CBS* decision.

The difficulty with this kind of statistical analysis is that it does not provide a valid basis for evaluating any specific decision in any specific case. It may well be that many of the Board's Section 10(k) decisions have been wrongly decided. But even if one were to assume that the Board has been wrong as much as fifty per cent of the time, it would not follow that the Board was wrong in this case. The only way to determine whether any particular case was correctly decided is to examine the decision in that case, and the record on which it was based.

In the present case, the record clearly shows that the disputed work—application of the "float coat" or final coat of portland cement on which tile is to be installed—has always been an integral part of the Tile Setters craft. The 1917 agreement, on which both unions rely, makes it clear that the historical practice was for the Tile Setters to apply the float coat. A Tile Setter spends a substantial

portion of his three-year apprenticeship learning to perform this operation (A. 68, 106-07, 163-64). Even the Plasterers have never contended that this work is strange or foreign to the Tile Setters' trade, or that the Tile Setters are incapable of performing the work properly. On the contrary, although the Tile Setters' witnesses claimed that the Plasterers were not trained to finish a wall to the precise specifications required to receive tile (A. 96, 130, 146), no Plasterers' witness even suggested that the Tile Setters could not perform the work properly.

Thus, this is not a case in which the Board has sustained an employer's assignment which is wholly inconsistent with established craft lines or traditional practices. On the contrary, the Tile Setters have at least as good a claim on the basis of history, experience, and traditional trade-union jurisdiction as do the Plasterers. In such a situation, it is certainly not an abuse of discretion for the Board to place considerable weight on the preferences, practices, and agreements of the employers involved.

Ironically, although the Plasterers accuse the Board of placing too much weight on the employers' work assignment, they also contend that the Board erred by failing to consider a certain "Guide Specification" (A. 381-84) which purports to be a joint publication of the Texas Ceramic Tile Contractors Association and the Texas Lathing and Plastering Contractors Association. The record indicates that the plastering contractors played a dominant role in the preparation of this document (A. 190-92, 194-95, 219) and that the Tile Setters played no role at all (A. 192, 218). Thus, the document merely reflects the position of the plastering contractors who, of course, are aligned with the Plasterers in this dispute. In other words, the Plasterers are simultaneously contending that the Board gave too much consideration to the views of the employers who controlled the disputed work, and that the Board gave too little consideration to the views of the rival employers

who want the work for themselves. Plainly, this argument makes no sense at all.

The Plasterers also argue that the established practice in the Houston area was to assign work of the type in dispute to the Plasterers. The record indicates, however, that there is no uniform practice in the area, and that both crafts have done this type of work. (A. 129, 145, 182, 199, 251-52). Indeed, the employers involved in the present case have consistently used Tile Setters to perform this work as their collective bargaining agreements require. The Board was thus clearly correct in its conclusion that the assignment of the work to the Tile Setters was "not inconsistent with area or industry practice." (A. 19).

Finally, the Plasterers argue that the Board should have given more weight to the 1917 agreement, and the decision of the Joint Board which purported to interpret and apply that agreement. As we have already pointed out, however, the Joint Board did not have jurisdiction to decide the dispute in this case, and its decision is therefore not binding either on the parties or on the Board. As for the 1917 agreement itself, the Tile Setters have consistently argued that this agreement supports their claim to the work, and not the Plasterers'. It is not clear whether the Board accepted the Tile Setters' view, or whether it concluded that an agreement executed in 1917 could not control a work-assignment dispute which arose out of new methods for installing tile which had been developed since that agreement was adopted. In either event, however, the Board's decision was within the broad authority granted to it by Section 10(k).

The *CBS* decision makes it quite clear that the Board's power to adjudicate jurisdictional disputes is "broad and lacking in rigid standards," and that its decisions are to be based on "experience and common sense." 364 U.S. at 583. The Board's decision in this case, we submit, is well within the range of discretion so conferred.

**CONCLUSION**

For the reasons stated above, this case should be dismissed as moot. In the alternative, if the Court should conclude that the case is not moot, then the decision of the National Labor Relations Board should be affirmed and its order enforced.

Respectfully submitted,

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No. 22,073

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PLASTERERS LOCAL UNION No. 79, OPERATIVE PLAS-  
TERERS AND CEMENT MASONS' INTERNATIONAL  
ASSOCIATION, AFL-CIO,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent,*

and

TEXAS STATE TILE & TERRAZZO COMPANY, INC., ET AL.,  
*Intervenors.*

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On Petition to Review and Set Aside, and on  
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the National Labor Relations Board

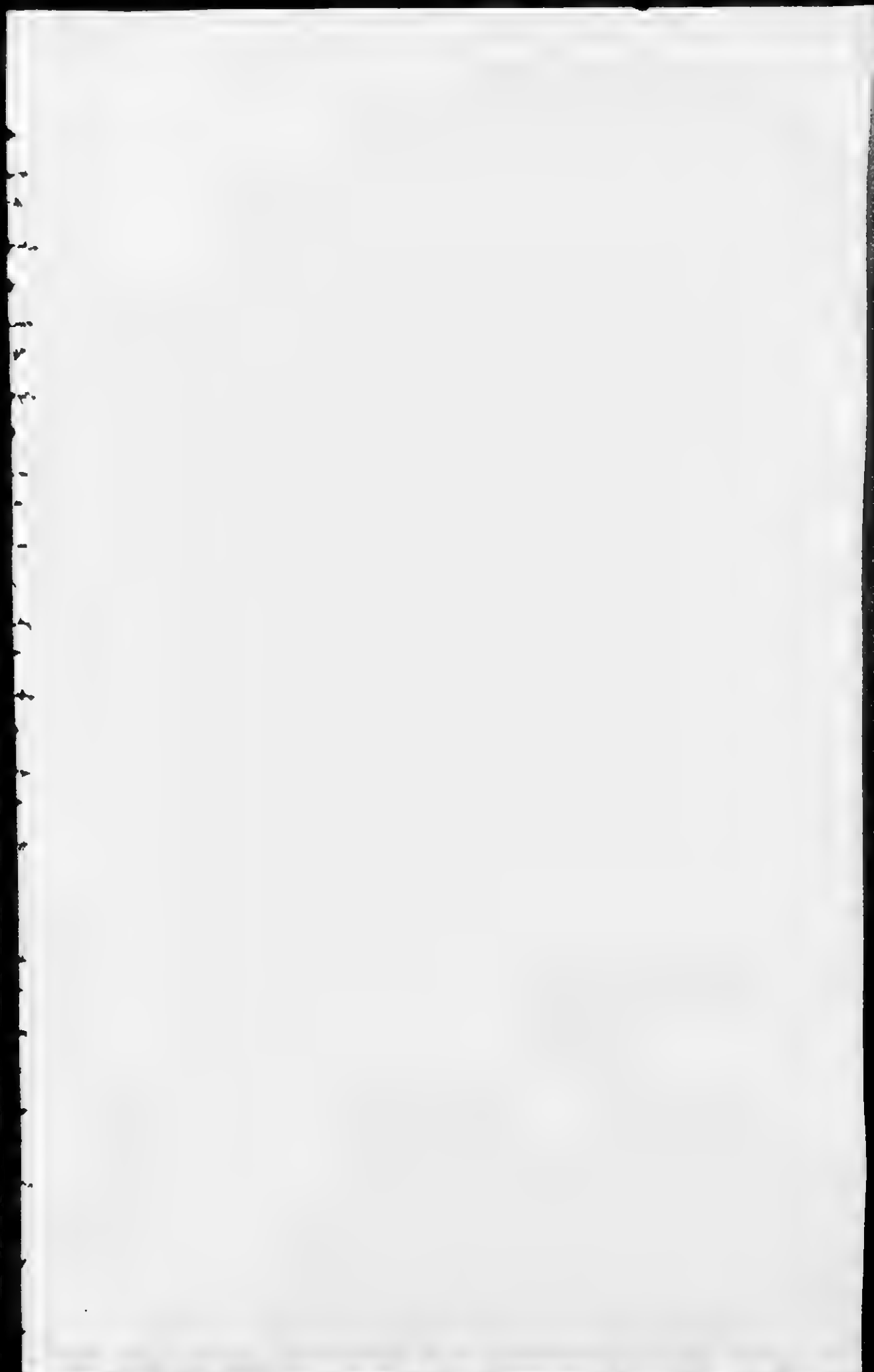
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BRIEF ON BEHALF OF INTERVENORS  
TILE CONTRACTORS ASSOCIATION OF AMERICA,  
INC., TEXAS STATE TILE & TERRAZZO CO., AND  
MARTINI TILE & TERRAZZO CO.

FILED SEP 25 1969

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Dated: September, 1969



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INC., TEXAS STATE TILE & TERRAZZO CO., AND  
MARTINI TILE & TERRAZZO CO.

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STATEMENT OF ISSUES PRESENTED

The parties have stipulated that the following  
issues are presented:

1. Whether substantial evidence on the whole record supports the Board's finding that Plasterers Local Union No. 79 picketed the M. D. Anderson Library job with an object of forcing or requiring Texas Tile to change the assignment of the disputed work from its own employees, who were members of or represented by Tile Setters Local No. 20, to employees who were members of or represented by Plasterers Local Union No. 79.<sup>1</sup>

2. Whether the Board's determination in the Section 10(k) proceeding that employees represented by Tile Setters Local No. 20 are entitled to the disputed work is valid and proper.

3. Whether the Board properly found that the employer controlling the work assignment, as well as the rival unions, must approve and enter into a voluntary adjustment procedure in order to preclude a Board hearing and determination pursuant to Section 10(k) of the Act.<sup>2</sup>

## STATEMENT OF THE CASE

### A. Jurisdiction

This case is before the Court upon petition of the Plasterers Local Union No. 79, Operative Plasterers'

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<sup>1</sup> This issue was not raised in petitioner's brief, and has apparently been abandoned. See NLRB brief, n. 1.

<sup>2</sup> This case is before the Court for the first time on the merits. On November 15, 1968, a panel of this Court (Circuit Judges Danaher, Wright, and Tamm) considered a motion by certain intervenors in this case to dismiss the petition as moot. The panel considered the motion in chambers and ordered "that consideration of the aforesaid motion be held in abeyance pending argument on the merits of this case." The order noted that Circuit Judge Wright "did not participate in the foregoing order."

and Cement Masons' International Association (the "Plasterers" herein) to review an order of the National Labor Relations Board, and upon a cross-application filed by the National Labor Relations Board for enforcement of its order. The Board's order issued pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Secs. 151, *et seq.*). Its Decision and Order (A. 1-10)<sup>3</sup> issued on June 27, 1968, and is reported at 172 NLRB No. 77; its underlying Decision and Determination of Disputes (A. 11-23) issued on August 22, 1967, and is reported at 167 NLRB No. 23. This Court has jurisdiction over the proceedings under Sections 10(f) and 10(e) of the Act.

#### B. Nature Of The Case And Proceedings Below

This case involves a jurisdictional dispute over certain work assigned by two separate employers at two separate construction jobs. The two employers, Martini Tile and Terrazzo Company and Texas State Tile and Terrazzo, Inc., intervenors herein, are tile contractors who had contracts to install tile at the separate jobs. In each of the cases, the employers assigned to their own employees, who were represented by Tile, Terrazzo and Marble Setters Local Union No. 20, Bricklayers, Masons and Plasterers International Union of America (herein the "Tile Setters"), the work of applying a coat of Portland cement mortar to walls upon which tile was to be placed. In each case, the Plasterers picketed the job site, and engaged in other conduct, in order to force

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<sup>3</sup> "A." refers to the printed appendix. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

or require the employers to assign to Plasterers the work of applying the cement mortar to the walls.<sup>4</sup> As a result of the picketing, a complete work stoppage occurred at each job site (A. 5-6).

The employers filed unfair labor practice charges with the Board, urging that the Plasterers' conduct violated Section 8(b)(4)(D) of the Act.<sup>5</sup> Pursuant to the statutory procedure, the Board, after finding reasonable cause that a violation of Section 8(b)(4)(D) existed, ordered a hearing pursuant to Section 10(k) of the Act in order to determine the underlying jurisdictional dispute.<sup>6</sup>

### C. The Decisions Of The Board

1. *Determination of the jurisdictional dispute.*— On August 22, 1967, the Board determined the underlying jurisdictional dispute "by deciding that tile setters, rather than plasterers, are entitled to the work in dispute." (A. 21.) Accordingly, it concluded that the employers' assignments of the work to employees represented by the Tile Setters should not be disturbed, and that the Plasterers were not entitled

<sup>4</sup> As shown *supra* n. 1, Plasterers do not here contest this fact.

<sup>5</sup> Section 8(b)(4)(D) is the "jurisdictional dispute" provision of the Act. In general, it proscribes union picketing or coercion of an employer designed to force or require the employer to assign work to one union rather than to another. For the full text of that section, see Appendix A, *infra*.

<sup>6</sup> Section 10(k) directs the Board to determine the underlying jurisdictional dispute whenever it is charged that Section 8(b)(4)(D) has been violated, unless "the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute." See Appendix A, *infra*.

to picket or otherwise coerce the employers to assign the work to employees represented by the Plasterers (A. 21-22).

In making this determination, the Board rejected the Plasterers' contention that the Board had no jurisdiction under Section 10(k): the Plasterers argued that "the parties" to the dispute had agreed upon a voluntary method of adjustment of the dispute because both unions were bound to submit the dispute to the National Joint Board for the Settlement of Jurisdictional Disputes (A. 17). The Board agreed that the two unions involved were bound to the National Joint Board, but it rejected the Plasterers' argument that the employer is not a "party" to the dispute within the meaning of Section 10(k) of the Act (A. 20, 17 n. 3). It held (*Id.*):

[The Plasterers contend] that Section 10(k) requires only that the unions or groups of employees claiming disputed work agree upon a method of adjustment. We find this contention without merit. The Board has consistently held that the employer who assigned the disputed work must be a party to an agreement that purports to settle an existing jurisdictional dispute.

Since neither of the employers involved here was subject to or bound by the National Joint Board, the Board found that the "parties" to the dispute, within the meaning of Section 10(k), had not agreed upon a method for the voluntary adjustment of the dispute (A. 20, 17 n. 3).<sup>7</sup>

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<sup>7</sup> The dispute involving the assignment of work by Texas Tile was submitted to the National Joint Board. Texas Tile did not participate in the submission of the dispute to the National Joint Board, and was not bound by its decision (A. 13-14, 20). Both the Plasterers and the Tile Setters claim



2. *Unfair labor practice finding.*—The Plasterers declined to comply with the Board's Decision and Determination of Disputes, and the Board, through its General Counsel, issued a complaint alleging that the Plasterers had violated Section 8(b)(4)(D) of the Act (A. 2, n. 2). The parties waived a hearing on the complaint, and submitted the proceeding directly to the Board for a decision on the record made in the 10(k) hearing (A. 2-3; 442-443).

The Board found that the Plasterers violated Section 8(b)(4)(D) of the Act by threatening and picketing the employers with an object of forcing or requiring them to assign the disputed work contrary to the Board's award in the Decision and Determination of Disputes (A. 7-8). In reaching the decision on the merits, the Board also reconsidered the Plasterers' argument that the parties had agreed upon a method of adjustment. The Board again rejected this argument, holding as follows (A. 6):

The [Plasterers'] defense herein, as argued in its brief, is in the nature of a request for reconsideration of the Board's Decision and Determination of Disputes issued in the 10(k) proceeding. It argues, *inter alia*, that the word "parties" as used in Section 10(k) does not mean the employer and the two unions or groups of employees claiming the work in dispute need agree upon a method for the voluntary adjustment of the dispute for the Board to quash the Notice of Hearing, but only that the two Unions

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that the award of the National Joint Board favors their respective claims, and the Board found the award to be "ambiguous" (A. 20).

The dispute over Martini Tile's assignment was not submitted to the National Joint Board (A. 20).

or groups of employees need agree upon such a method of adjustment, and that since [the Plasterers] and the Tile Setters are both subject to the Joint Board's jurisdiction, the Notice of Hearing should have been quashed. We reiterate, however, our consistent interpretation of Section 10(k) that the employer controlling the work assignment as well as the rival unions involved comprise the "parties to such dispute," and all must approve and enter into a voluntary adjustment procedure in order to preclude a hearing and determination pursuant to that Section. [Citing cases]. Moreover, we note that the Board's longstanding interpretation of this aspect of Section 10(k) was neither questioned nor disturbed when the National Labor Relations Act was most recently amended by Congress in 1959. Accordingly, we find no merit in this contention of the [Plasterers].

The Board issued its usual order, requiring the Plasterers to cease and desist from the unfair labor practices found and to post the appropriate notices (A. 8-10).

#### D. Scope Of The Instant Brief

Because both the Board and the union intervenors are filing briefs in support of the merits of the Board decision, the employer intervenors, in order to avoid unnecessary and cumulative briefing, herein discuss only the third issue as framed by the parties (*supra* p. 2): *i.e.*, whether the employer controlling the work assignment, as well as the rival unions, is a "party" to a jurisdictional dispute within the language of Section 10(k), and therefore must join in any "agreed upon methods for the voluntary adjustment of the dispute" before the Board is divested of authority to determine the dispute.

## ARGUMENT

**The Board Properly Found That The Employer Controlling The Assignment Of Work Must Join In Any Agreed-Upon Method Of Voluntary Adjustment Of A Jurisdictional Dispute Before The Board Is Divested Of Authority To Determine The Dispute Under Section 10(k) Of The Act**

In contending that only the rival unions need to agree upon a voluntary method of adjustment in order to divest the Board of authority to proceed under Section 10(k) of the Act, the Plasterers' raise an argument which unions have unsuccessfully espoused since the enactment of Taft-Hartley in 1947. As we show below, this argument has never won judicial approval, and the Board has consistently rejected it. Indeed, this Court, as well as other courts of appeal, have found that the absence of the employer's assent to such an agreement obligates the Board to proceed to a 10(k) hearing and determination of the jurisdictional dispute.

Accordingly, we show below that the development of the Board and court law is contrary to the Plasterers' argument here, that this development of the law is consistent with statutory objectives and is supported by good reason, and that the underlying bases of the Plasterers' argument are without merit.

***A. The Board's Interpretation Of Section 10(k) Has Been Judicially Approved And Comports With Legislative Policy***

In the first cases brought under Section 10(k) after that section was added to the Act in 1947, the Board was forced to determine the scope of the section with relation to the employer's role in jurisdictional disputes. In *Lodge 68 of The International*

*Association of Machinists (Moore Drydock Company)*, 81 NLRB 1108 (1949), the Board refused to adopt the contention of a dissenting Board member<sup>8</sup> that Section 10(k) was appropriate to determine only those disputes between labor organizations where the employers were neutral and indifferent. The Board found that the statute left it no discretion as to when to invoke Section 10(k), but instead "directed" it to invoke that section whenever an 8(b)(4)(D) violation was charged. 81 NLRB at 1114. Shortly thereafter, in *International Longshoremen's and Warehousemen's Union, Local 16 (Juneau Spruce Corp.)*, 82 NLRB 650 (1949), the Board rejected the same argument presented by an employer. The employer there contended that since the dispute was not merely between rival unions, the Board should avoid a 10(k) determination and proceed directly to an 8(b)(4)(D) hearing. In rejecting this contention the Board said (82 NLRB at 656):

[I]n the absence of language specifically limiting the application of Section 10(k) to certain situations *only*, or even persuasive legislative history in support of such restricted application, the Board is obliged to give effect to that Section which its language requires.

Thus, in these early decisions the Board clearly rejected the view that Section 10(k) was applicable only where the employer was a neutral victim to a union dispute. Implicit in these decisions was the view that jurisdictional disputes should be determined by weighing the interests of all concerned, the employers as well as the rival unions.

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<sup>8</sup> Dissent of Member Houston, 81 NLRB at 1125-1128.

Thereafter, the Board consistently refused to avert its own jurisdiction under 10(k) unless both the unions and the employer had agreed upon a voluntary method of adjustment. See *Los Angeles Building & Construction Trades Council (Westinghouse Electric Corp.)*, 83 NLRB 477, 482 n. 7 (1949); *International Hod Carriers, Local 231 (Middle States Tel. Co.)*, 91 NLRB 598, 604 (1950). In subsequent cases, as in the instant case, the Board referred to the employer as a "party" to the dispute, and it has consistently refused to avert its jurisdiction unless all "parties" have "submitted to us satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute." *International Union of Operating Engineers, Local 66 (Frank P. Badolato & Sons)*, 135 NLRB 1392, 1396 (1962).<sup>9</sup>

The Board's interpretation of Section 10(k) in this regard has received unanimous approval from the courts which have discussed the point. This Court,

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<sup>9</sup> Accord: *United Brotherhood of Carpenters, Local 581 (Ora Collard)*, 98 NLRB 346, 349 (1952); *Local 17, International Union of Operating Engineers (Empire State)*, 99 NLRB 1481, 1485 (1952); *United Association of Journeymen & Apprentices, Local 428*, 108 NLRB 186, 197 (1954); *United Association of Journeymen & Apprentices, Local 420 (Frank W. Hoke)*, 109 NLRB 854, 857 (1954); *Local 450, International Union of Operating Engineers (Sline Industrial Painters)*, 119 NLRB 1725, 1731-1732 (1958); *Local 173, Wood, Wire & Metal Lathers (Newark & Essex Plastering Co.)*, 121 NLRB 1094, 1103 (1958); *Newspaper & Mail Deliverers' Union (News Syndicate Co., Inc.)*, 141 NLRB 578, 580 (1963); *Bricklayers & Masons International Union, Local No. 3 (Engineered Building Specialties, Inc.)*, 144 NLRB 1279, 1282 (1963); *Latherers Local 62 (Belou & Co.)*, 150 NLRB 21, 25 (1964).

in *Quinn, and Riggers and Machinery Erectors, Local 575 v. N.L.R.B. (Don Cartage Co.)*, 61 LRRM 2690 (Nos. 19673 & 19686, March 29, 1966),<sup>10</sup> found the Board had a "duty" to determine a jurisdictional dispute under 10(k) where all the unions were bound to the settlement procedures under the National Joint Board but the employers were not so bound and refused to be bound.

In that case, the Board had found that the unions involved were subject to the National Joint Board, that the employers were not, and that therefore there were no "agreed upon methods for voluntary adjustment." *Millwrights Local Union No. 1102, United Brotherhood of Carpenters (Don Cartage Company)*, 157 NLRB 10, 19 (1966), *supplementing*, 154 NLRB 513, 515 (1965). However, the Board declined to decide the jurisdictional dispute because the National Joint Board had recently been reconstituted, holding (154 NLRB at 517):

[W]e believe that the new Joint Board should be given the opportunity to resolve this dispute on a voluntary basis. It may be that after study of the new procedures of the Joint Board, the employers will find these more acceptable than the old and will agree to submit their dispute to the new Joint Board.

This Court, in a *per curiam* decision, ordered the Board to determine the jurisdictional dispute. The Court noted that the Board had "attempted to avoid deciding the issue by expressing the hope that the National Joint Board for Settlement of Jurisdictional

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<sup>10</sup> This decision apparently was not published in the Federal Reporters. The opinion, as reported in LRRM, is attached here as Appendix B.

Disputes—a voluntary association of which the employers here involved were not members—would resolve the jurisdictional dispute for the future,” and concluded “that it was the duty of the Board” to determine the jurisdictional dispute under Section 10(k).

In a concurring opinion, Chief Judge Bazelon specifically rejected the Board’s deferral to the National Joint Board for an opportunity to resolve the dispute on a voluntary basis. Judge Bazelon concluded:

But the employers have consistently refused to be bound by the procedures of the Joint Board. This was shown both at the time the settlement was approved and more recently upon remand to the Board on its motion to adduce new evidence designed to prove the opposite. Thus the sole reason which the Board offered for its action falls.

Accordingly, we submit that this Court in the *Quinn* opinion has affirmed the principle that an employer, as well as the rival unions, must be a party to an agreement for the voluntary adjustment of a dispute in order to divest the Board of authority under Section 10(k).

Both the Fifth Circuit and the Third Circuit have indicated their approval of the Board’s interpretation. In *Local 450, International Union of Operating Engineers v. Elliott*, 256 F.2d 630, 636 (5th Cir., 1958), the Fifth Circuit deferred to the Board’s fact-finding function for determination of whether “the parties have agreed upon a method for the voluntary adjustment of the dispute—that is, whether Sline [the Employer] has agreed to submit to a National



Joint Board settlement." (Emphasis supplied).<sup>11</sup> And in *N.L.R.B. v. Local 825, International Union of Operating Engineers*, 410 F.2d 5, 9 at n. 2 (3rd Cir. 1969), the Third Circuit cited the instant case for the proposition that the Board needs to hold a 10(k) hearing only where all the parties are not bound to a method for voluntary adjustment. In the *Local 825* case, all the parties—the unions and the employer—had appeared before the National Joint Board and were bound to the determination of that body;<sup>12</sup> when Local 825 refused to comply with the Joint Board determination, the Board proceeded with a complaint under Section 8(b)(4)(D) without first holding a 10(k) hearing. The Court affirmed the Board's finding of an 8(b)(4)(D) violation, and rejected the contention of Local 825 that a 10(k) hearing was necessary. It found, instead, that a 10(k) hearing was appropriate only where the parties were not bound to a method of voluntary adjustment; its citation of the instant case to support its finding indicates the court's agreement with the Board that the employer is a party to a dispute within the meaning of Section 10(k). Cf., *N.L.R.B. v. Local 825, Int'l Union of Operating Engineers*, 326 F.2d 213 (3rd Cir. 1964); *McLeod*

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<sup>11</sup> This case was before the Fifth Circuit on appeal from a district court judgment granting the Board a temporary injunction under Section 10(l) of the Act. The Union argued that no injunction should issue because the parties had agreed to submit the dispute to the National Joint Board, and thus, the Board had no authority to proceed under 10(k).

<sup>12</sup> This fact is plainly shown in the Board's decision in that case. *Local No. 825, Int'l Union of Operating Engineers (Burns & Roe, Inc.)*, 162 NLRB 1617, 1618 n. 3, 1631-1632 (1967).



v. *Newspaper and Mail Deliverers Union of New York City*, 205 F. Supp. 477 (S.D.N.Y. 1962).

Moreover, it seems only to state the obvious to say that the employer controlling and making the work assignment is one of the "parties" to a jurisdictional dispute. The employer certainly feels the economic thrust of such disputes when a walk-out or picketing closes or impairs his business.<sup>13</sup> And generally, the dispute occurs because the employer initiated the assignment of work to one group instead of another. In many instances, as was the case here, the employer assigned the work to one group because he preferred that group for reasons of efficiency, economy, ability, or the like. The dissatisfied union places the economic pressure on the employer and the "dispute" is actually between that union and the employer more so than between the rival unions. But even where the employer is neutral with respect to the result, this does not detract from the fact that his actions precipitated the dispute and that he is directly affected by it.

The employer is also a party to a jurisdictional dispute in most cases under the statute in the sense that he generally is the charging party before the Board. As a charging party, the employer is a "party" within the Board's Rules and Regulations<sup>14</sup>

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<sup>13</sup> As the Supreme Court said in *CBS, supra*, "it is the employer here, probably more than anyone else, who has been and will be damaged by a failure of the Board to make the binding decision that the employer has not been able to make." 364 U.S. at 582.

<sup>14</sup> Section 102.8 (29 C.F.R. § 102.8) of these Rules includes as a party to a Board proceeding "any person filing a charge" before the Board. As a party, the employer "may have vital private rights." *Scofield v. N.L.R.B.*, 382 U.S. 205, 220 (1965).

for purposes of determining the dispute, and plays a significant role in the determination of the dispute. Many factors relevant to the determination—*e.g.*, past practice, efficiency, and economy—are matters peculiarly within the employer's knowledge, and necessarily are presented into evidence by him.<sup>15</sup> Therefore, his participation as a party to the proceedings is vital.

Furthermore, the intent of Congress in enacting Section 10(k) is furthered by requiring the employer to assent to any agreed-upon method of voluntary adjustment before the Board's authority is divested. The Supreme Court noted in the *CBS* decision that Congress purposely, "after discussion and consideration, decided to intrust this decision [of determining the underlying jurisdictional disputes] to the Board" rather than to private arbitration. 364 U.S. at 583.<sup>16</sup> This Congressional purpose would be thwarted if the Plasterers' argument were to prevail, for few jurisdictional disputes would reach the Board if only the rival unions' agreement was necessary to take a dis-

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<sup>15</sup> See Attleson, *The NLRB and Jurisdictional Disputes: The Aftermath of CBS*, 53 Geo. L. J. 93, 111 (1964).

<sup>16</sup> The Court noted (364 U.S. at 581) that Section 10(k), as drafted in its original form by Senator Morse, empowered and directed the Board either "to hear and determine the dispute out of which such unfair labor practice shall have arisen or to appoint an arbitrator to hear and determine such dispute. \* \* \*" 93 Cong. Rec. 1913, in II Legislative History of The Labor-Management Relations Act (herein referred to as Leg. Hist.) 987 (1947). The Court then found that the "authority to appoint an arbitrator passed the Senate but was eliminated in conference, leaving it to the Board alone 'to hear and determine' the underlying jurisdictional dispute." 364 U.S. at 581 (footnotes omitted).

pute to private arbitration. The Board would hear only those rare cases in which the rival unions either were not subject to the National Joint Board, or other dispute-settlement agreements, or could not otherwise agree on a method of adjustment.

It is true that the Congress did encourage private adjustment of such disputes in Section 10(k), but it is clear that Congress' aim was the *permanent* resolving of disputes by all the parties.<sup>17</sup> As the Court emphasized in *CBS* (364 U.S. at 576), "Section 10 (k) . . . quite plainly emphasizes the belief of Congress that it is more important to industrial peace that jurisdictional disputes be settled permanently than it is that unfair labor practice sanctions for jurisdictional strikes be imposed upon unions." By requiring the employer to be bound to any private settlement before it is permanently binding on him, however, the Board strengthens private adjustments and enhances the likelihood that the adjustment will lead to a permanent settlement of the dispute. Thus, a private arbitration between two unions is not binding on or enforceable against the employer, and the victorious union in that proceeding can achieve its aims solely through resort to picketing, strikes, and other economic coercion. Nor is there any provision in the Act which can provide the compulsion for the employer to accept the arbitration determination.<sup>18</sup> On the other hand, an arbitration agreed upon by

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<sup>17</sup> "The language of § 10(k), supplementing § 8(b)(4)(D) as it does, sets up a method adopted by Congress to try to get jurisdictional disputes settled." *CBS*, *supra*, 364 U.S. at 579.

<sup>18</sup> No procedure exists under Section 10(k) to bind the employer to a determination of a jurisdictional dispute. See Attleson, *supra* n. 15, at 111-112.

the employer and the rival unions is binding on all these parties and is enforceable against all through normal contract means.<sup>19</sup> Accordingly, the Board's requirement that the employer assent to any "agreed upon methods for voluntary adjustment" effectuates the Congressional purpose of enhancing the permanent resolution of jurisdictional disputes.<sup>20</sup>

For the foregoing reasons we submit that the Board's consistent interpretation of the term "parties" in Section 10(k) comports fully with good reason and the legislative intent, has been judicially approved, and is therefore entitled to enforcement here.<sup>21</sup>

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<sup>19</sup> It is in this sense that the National Joint Board fails to resolve jurisdictional disputes in so many instances. Many employers are unwilling to bind themselves to the Joint Board because that body, as in the instant case, relies most often upon precedent, rather than upon managerial factors such as economy, efficiency, and productivity. See Note, *The NLRB and Deference to Arbitration*, 77 Yale L. J. 1191, 1200-1201 n. 52 (1968); K. Strand, *Jurisdictional Disputes in Construction* 93 (1961). Since the employer is therefore not bound to accept the award of the Joint Board, and is under no compulsion under the Act to accept the award, he may ignore the award and thus continue the dispute. Moreover, the employer's position is completely understandable since the Joint Board does not emphasize those factors which are vital to the employer's operation of his business.

<sup>20</sup> In light of this Congressional purpose, the Board need not necessarily couch its "employer-assent" rule in terms of the employer as a "party." It could find that there is no "satisfactory evidence" of an agreed-upon method unless the employer is bound to accept the determination, for otherwise the agreed-upon method is lacking in permanency.

<sup>21</sup> The Board's consistent and unvarying interpretation of this statutory language since its enactment in 1947 is entitled

### ***B. The Plasterers' Contentions Are Without Merit***

In support of their argument that an employer should not be considered a "party" to a jurisdictional dispute for the purposes of determining whether "agreed upon methods for the voluntary adjustment" of the dispute have been made, the Plasterers rely on certain contentions which are without merit. We discuss these below.

1. The Plasterers contend that the legislative history of Section 10(k) "shows that the Board's interpretation of parties in 10(k) is wrong and cannot be reconciled with the intent of Congress." (Brief, p. 17.) In support of this contention, the Plasterers rely on references in the legislative history to the effect that jurisdictional disputes were disputes "solely between two unions" and should be settled "within their own ranks." (Brief, pp. 17-21.) We submit that, contrary to the Plasterers' contention, these and

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to great weight by the court. *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965); *FTC v. Mandel Brothers*, 359 U.S. 385, 391 (1959); *Commissioner v. Estate of Sternberger*, 348 U.S. 187, 199 (1955); *Union Mfg. Co. v. N.L.R.B.*, 95 App. D. C. 255, 221 F.2d 532, 536 (D.C. Cir. 1955), *cert. denied*, 349 U.S. 921. Particularly is this so since Congress has considered and enacted extensive revisions to related provisions of the Act, but has never changed nor proposed to change the interpretation questioned in this case. (See NLRB Brief, pp. 18-19.) We submit that under these circumstances "it is a fair assumption that by reenacting without pertinent modification the provisions with which we here deal, Congress accepted the construction placed thereon by the Board . . . ." *N.L.R.B. v. Gullett Gin Co.*, 340 U.S. 361, 366 (1951). Compare *N.L.R.B. v. Radio and Television Broadcast Engineers Union, Local 1212, IBEW (CBS)*, *supra*, 364 U.S. 573, 585 (1961), where the Court relied on circumstances not present here in rejecting a similar argument.

similar references do not establish that Congress intended by the language of Section 10(k) to include only the disputing unions as "parties" to a jurisdictional dispute. Indeed, we submit that the meaning of "parties" was never discussed or considered by Congress, and that therefore the legislative history is not dispositive of this issue.

There was no Section 10(k) in the bill that passed the House, and there was no proposal for such a provision. That bill merely found "jurisdictional strikes" to be unlawful. H.R. 3020, as passed House, 80th Cong., 1st Sess., pp. 12, 47-50, in I Leg. Hist. 169, 204-207 (1947). Accordingly, statements by various members of the House as to their definition of a jurisdictional strike, as relied upon by the Plasterers (Brief, pp. 18, 21), clearly are not indicative of what Congress meant by the word "parties" as used in Section 10(k).

Section 10(k) was first introduced into the Act as an amendment offered by Senator Morse. Senator Morse's amendment proposed to supplement Section 8(b)(4)(D) by empowering and directing the Board either "to hear and determine the dispute out of which such unfair labor practice shall have arisen or to appoint an arbitrator to hear and determine such dispute."<sup>22</sup> It was Senator Morse's intention that arbitration be utilized because "time is of the essence and the regular procedure of the Board for hearing and judicial enforcement would not remedy the evil sought to be corrected."<sup>23</sup> The Morse amendment was included in the Senate bill as it passed the

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<sup>22</sup> 93 Cong. Rec. 1913, in II Leg. Hist. 987 (1947).

<sup>23</sup> 93 Cong. Rec. 1912, in II Leg. Hist. 985 (1947).

Senate.<sup>24</sup> In Conference, however, the authority to appoint arbitrators was deleted and the rest of Section 10(k) was retained.<sup>25</sup>

In none of the debates or reports concerning 10(k) is there any discussion of what Congress meant by the term "parties." The Plasterers rely (Brief, pp. 19-21) almost exclusively on statements by Senators Morse and Murray to the effect that the Morse proposal "will have a beneficial effect in stimulating labor organizations to set up appropriate machinery for the settlement of such controversies within their own ranks, where they properly should be settled."<sup>26</sup> These statements, however, are not dispositive of the question here for several reasons. First, both Senators apparently failed to accept the conclusion that jurisdictional disputes are often not between two unions, but are disputes between a union and an employer who desires to assign the work to his own employees (who may or may not be represented by a union). (See, e.g., *International Longshoremen's and Warehousemen's Union, Local 16 (Juneau Spruce Corp.)*, 82 NLRB 650 (1949), one of the first jurisdictional dispute cases before the Board, in which there was no dispute between two unions.) However, this distinction was recognized by Congress and re-

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<sup>24</sup> H.R. 3020, as passed Senate, 80th Cong., 1st Sess., pp. 100-101, in I Leg. Hist. 258-259 (1947). The Senate bill contained the exact language of Section 10(k) as it was ultimately enacted except for the provision authorizing the Board to appoint an arbitrator.

<sup>25</sup> H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 57, in I Leg. Hist. 561 (1947).

<sup>26</sup> 93 Cong. Rec. 4155 (Daily ed., April 25, 1947), in II Leg. Hist. 1046 (1947).



sulted, in Conference, in a change of the language of Section 8(b)(4)(D) so as to encompass disputes involving employees who were not in a labor organization.<sup>27</sup> Senator Murray objected in vain to this enlargement of the scope of a jurisdictional dispute.<sup>28</sup> It is plain, however, that the comments of Senators Morse and Murray related to the more restrictive view of jurisdictional disputes which Congress rejected.

Second, there is no indication that the views of Senators Morse and Murray as to where and how jurisdictional disputes should be settled represented the views of the majority of the Congress. Indeed, Congress rejected the Morse proposal that these disputes be decided by arbitrators and instead "decided to intrust this decision to the Board." *CBS, supra*, 364 U.S. at 583. Thereafter, Senator Morse objected strenuously to the 10(k) provision, as it emerged

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<sup>27</sup> Section 8(b)(4)(D) as it passed the Senate proscribed strikes and other coercion designed to force "any employer to assign to *members of a particular labor organization* work tasks assigned by an employer to *members of some other labor organization . . .*" H.R. 3020, as passed Senate, 80th Cong., 1st Sess., pp. 81-83, in I Leg. Hist. 239-241 (1947) (emphasis supplied). Pursuant to an amendment offered by Senator Taft, however, the bill as enacted prohibited such coercion designed to force "an employer to assign particular work to *employees in a particular labor organization or in a particular trade, craft, or class* rather than to employees in another labor organization or in another trade, craft, or class . . ." Section 8(b)(4)(D) (emphasis supplied.) See the explanation of Senator Taft in this regard, 93 Cong. Rec. 7002 (Daily ed., June 12, 1947), in II Leg. Hist. 1624 (1947).

<sup>28</sup> 93 Cong. Rec. 6662 (Daily ed., June 6, 1947), in II Leg. Hist. 1579 (1947).



from the Conference Report, and both Senators Morse and Murray voted against the bill.<sup>29</sup>

Accordingly, we submit that the comments of Senators Morse and Murray are not dispositive of the intent of Congress on the point in issue. In the absence of any specific legislative history as to what Congress intended by the use of the term "parties" in Section 10(k), we submit that the legislative history cannot be said to support the contention of the Plasterers.

2. Nor is there merit to the Plasterers' contention (Brief, p. 17) that the Supreme Court in the *CBS* case construed the term "parties" to mean only the disputing unions. In that case the Court pointed out that the employer was willing to reach any accommodation to which both unions would adhere. 364 U.S. at 575. In that circumstance the Court was considering the case only in the posture of disagreement between two unions. It noted, however, that the employer was not such a neutral in all jurisdictional disputes. 364 U.S. at 579. Moreover, it is plain that in that case the Court was deciding only *how* the Board must decide cases which are properly before it under Section 10(k); the Court was not faced with the question of determining *when* a case is appropriately before the Board under 10(k).

3. There is likewise no merit to the Plasterers' reliance (Brief, pp. 28-29) upon cases where the Board has quashed the 10(k) hearing because one of the unions no longer claimed the work. This prac-

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<sup>29</sup> 93 Cong. Rec. 6610-6611 (Daily ed., June 5, 1947), in II Leg. Hist. 1554-1555 (1947); 93 Cong. Rec. 6695 (Daily ed., June 6, 1947), in II Leg. Hist. 1620-1621 (1947).

tice does not indicate that the Board has accepted a "voluntary adjustment," but rather indicates that a necessary requisite of a jurisdictional dispute—the existence of conflicting claims to the work—is absent. The employer is certainly not bound by this course of events and may then assign the work to a third group of employees.

Nor is it an anomaly, as the Plasterers contend, that the Board does not require that the employer participate in a 10(k) hearing. The employer may certainly waive his right to participate in such a proceeding just as he may waive his right to participate in a proceeding which is an "agreed-upon method for the voluntary adjustment" of the dispute. The statutory key, according to the Board's interpretation, is not the employer's participation, but his agreement to be bound by the voluntary adjustment. Thus, there is no anomaly in the Board's position.

### CONCLUSION

For the foregoing reasons we respectfully submit that the Board's interpretation of Section 10(k) is proper and should be affirmed. We respectfully request that the petition for review be denied and that the Board's cross-application for enforcement be enforced in full.

---

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Dated: September, 1969



## APPENDIX A

The applicable provisions of the National Labor Relations Act are as follows:

Section 8(b)(4)(D): It shall be an unfair labor practice for a labor organization or its agents—

\* \* \* \*

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

\* \* \* \*

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: \* \* \*

\* \* \* \*

Section 10(k): Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out

of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

## APPENDIX B

The opinion of this Court in *Quinn v. N.L.R.B.*, as reported in 61 LRRM 2690, is as follows:

QUINN V. NLRB  
(Don Cartage Co.)

U.S. Court of Appeals,  
District of Columbia Circuit

QUINN, and RIGGERS AND MACHINERY ERECTORS, LOCAL 575 v. NATIONAL LABOR RELATIONS BOARD; DON CARTAGE COMPANY et al. v. Same, Nos. 19673 and 19686, March 29, 1966

LABOR MANAGEMENT RELATIONS ACT

—Jurisdictional dispute—Section 10(k) proceeding—Duty of Board § 58.305

In proceeding under Section 10(k) of LMRA, order of NLRB is set aside and cause remanded to Board for determination of a long-continued jurisdictional dispute between unions, it appearing that it was the duty of Board to decide the jurisdictional issue, but that Board attempted to avoid deciding the issue by expressing the hope that National Joint Board for Settlement of Jurisdictional Disputes would resolve the jurisdictional dispute for the future.

---

Petitions to review and set aside an NLRB order (59 LRRM 1772, 154 NLRB No. 45). Order set aside and cases remanded to Board.

Before BAZELON, Chief Judge, WILBUR K. MILLER, Senior Circuit Judge, and DANAHER, Circuit Judge.

*Full Text of Order*

PER CURIAM:—It appearing to the Court, after consideration of the record, briefs and oral arguments, that this proceeding under Section 10(k) of the National Labor Relations Act, as amended,<sup>1</sup> presented a long-continued jurisdictional dispute between contending unions, and

It further appearing to the Court that the Labor Board, after an exhaustive evidentiary hearing at which the jurisdictional dispute was fully developed by all the parties, issued a decision and order which was not dispositive of the dispute, but attempted to avoid deciding the issue by expressing the hope that the National Joint Board for Settlement of Jurisdictional Disputes—a voluntary association of which the employers here involved were not members—would resolve the jurisdictional dispute for the future, and

It further appearing to the Court that it was the duty of the Board, in the circumstances here shown, to decide the jurisdictional issue presented and fully developed in the hearing before it (*Labor Board v. Radio Engineers*, 364 U.S.

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<sup>1</sup> 29 U.S.C. § 160(k) :

“Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 158(b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.”

573, 47 LRRM 2332 (1961); N.L.R.B. v. Radio Engineers, 272 F.2d 713, 45 LRRM 2245 (2nd Cir. 1959); N.L.R.B. v. United Brotherhood, 261 F.2d 166, 43 LRRM 2132 (7th Cir. 1958); N.L.R.B. v. United Association, 242 F.2d 722, 39 LRRM 2629 (3rd Cir. 1957), therefore

It is ordered that the decision and order now under review be, and they are, set aside and the cases are remanded to the Board for consideration and determination of the jurisdictional dispute as submitted to it.

---

*Concurring Opinion*

BAZELON, Chief Judge, concurring:—In this case the Millwrights Local 1102 picketed General Motor's Ternstedt plant. This was done pursuant to that union's policy of picketing employers belonging to the Michigan Cartagemen's Association (Heavy Hauler's Division) to get the work of installing and dismantling machinery that the employers had assigned to the Riggers Local 575. The employer here, Don Cartage, filed an unfair labor practice charge under § 8(b)(4)(D) of the National Labor Relations Act based on the picketing.

Pursuant to § 10(k) of the Act, a hearing was held to resolve the work assignment dispute between the two unions. The employers association intervened, and the parties agreed with the Board's hearing examiner to extend the scope of the hearing to include all similar work in Michigan where the two unions may be found working in conjunction with each other. The purpose, of course, was to put a final end to the labor war between the unions.



But some 4,000 pages of record, 34 hearing days, and 10 months later, the Millwrights signed a settlement with the Board's Regional Director agreeing not to force or require Don Cartage Co., by means prohibited by § 8(b)(4)(i)&(ii), to assign to it the disputed work at the Ternstedt plant—which had long since been lost by Don Cartage. The Board issued notice to show cause why the settlement should not be approved and, over the vigorous objections of appellants, rendered an Order and Decision approving the settlement and quashing notice of the hearing in which the record was ripe for decision.

Appellants urge here that the Board had a duty under § 10(k) to resolve the continuing work assignment dispute despite the Millworkers' agreement. Whether settlement of the Ternstedt dispute moots the § 8(b)(4)(D) proceeding and therefore the hearing under § 10(k) necessarily depends on whether the Board decides to resolve only that particular dispute or the continuing controversy which underlies it. The Board has a wide discretion in this matter. But this discretion is not limitless; the Board's action must be supported by the reasons on which it relies.

Although the Board here recognized that the arguments for permanent resolution of the fundamental dispute were "weighty," it declined to resolve the continuing controversy for one reason:

[W]e believe that the new [National Joint Board for the Settlement of Jurisdictional Disputes] should be given the opportunity to resolve this dispute on a voluntary basis. It may be that after study of the

new procedures of the Joint Board, the employers will find these more acceptable than the old and will agree to submit to the new Joint Board.

But the employers have consistently refused to be bound by the procedures of the Joint Board. This was shown both at the time the settlement was approved and more recently upon remand to the Board on its motion to adduce new evidence designed to prove the opposite. Thus the sole reason which the Board offered for its action falls. If it has other reasons it has not offered them. I therefore agree that we should remand to the Board, ordering it to resolve the continuing controversy between the two unions.

REPLY BRIEF OF PETITIONER, PLASTERERS LOCAL  
UNION NO. 79

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 22073**

---

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS'  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION,  
AFL-CIO, *Petitioner.*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

---

On Petition for Review and Cross-Petition for Enforcement  
of an Order of the National Labor Relations Board

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August 29, 1969





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NATIONAL LABOR RELATIONS BOARD, *Respondent.*

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On Petition for Review and Cross-Petition for Enforcement  
of an Order of the National Labor Relations Board

---

REPLY BRIEF OF PETITIONER, PLASTERERS LOCAL  
UNION NO. 79

---

**ARGUMENT**

**I. This Case Is Not Moot**

The Union Intervenors devote the major portion of their brief to the argument raised initially by a Motion to Dismiss, that this case is moot. The Court, on November 15, 1968, deferred ruling on the motion until argument on the merits of this case.

Since the "mootness" argument in Union Intervenors' brief is substantially the same as that made in support of its motion, and since Petitioner and the Board<sup>1</sup> filed lengthy oppositions to that motion at the time, the Petitioner will not unduly extend this reply by repeating the

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<sup>1</sup> The Employer Intervenors also opposed the motion and adopted by reference the legal memorandum filed by the Board. We note that the brief filed by the Ceramic Tile Institute of America, *et al.* as amicus curiae also argues vigorously that the case is not moot (Br. 21).

opposing arguments. The Court is respectfully referred to the memoranda previously filed by the parties in opposition.

The Plasterers would point out to the Court that on or about October 25, 1968, it filed a protective motion with the Court to "Vacate Award and Order of the Board and Remand Case to the Board for Dismissal If Case Dismissed as Moot." This motion was filed subsequent to the Union Intervenor's Motion to Dismiss and has not, of course, been ruled on. If the Court does dismiss the case, it is requested that Petitioner's motion to vacate also be granted.<sup>2</sup>

## **II. Section 10(k) Does Not Require the Employer To Be a Party to a Voluntary Method of Adjustment**

There is no doubt that Congress, when considering labor legislation in 1947, was deeply troubled by jurisdictional disputes and the effect upon employers of these interunion quarrels.<sup>3</sup> The legislative history described in the Plasterers' main brief demonstrates that Congress was also concerned with establishing some procedure to settle work disputes between unions (Br. 17-21).

In approaching a solution to this problem, however, Congress did not, in Section 8(b)(4)(D), grant an absolute right to employers to assign work as they saw fit;<sup>4</sup>

<sup>2</sup> Petitioner has not argued the first stipulated issue in this case as the Board correctly points out (Br. 2, n.1) because its challenge is basically directed to the Board's Section 10(k) Decision. If the § 10(k) Decision falls the unfair labor practice order falls with it, and there is no need to discuss the union conduct or the object of that conduct under § 8(b)(4)(D). *NLRB v. Radio and Television Broadcast Engr. Union, Local 1212 (CBS)*, 364 U.S. 573 (1961); *NLRB v. Local 991 Int'l Longshoremen's Ass'n.*, 332 F. 2d 66 (5th Cir. 1964).

<sup>3</sup> See, e.g., I Leg. Hist. 615 (Rep. Hartley); II Leg. Hist. 995 (Sen. Lucas); and II Leg. Hist. 1012 (Sen. Taft).

<sup>4</sup> See I. Leg. Hist. 292, 314 (House Rep. No. 245 on H.R. 3020); and Note, 73 Harv. L. Rev. 1150, 1155 (1960). If § 8(b)(4)(D) granted an absolute right to employers, § 10(k) would be superfluous. *NLRB v. Radio and Television Broadcast Engr. Union, Local 1212*, 272 F. 2d 713 (2nd Cir. 1959) and, of course, the Supreme Court would not have ordered the Board to make affirmative work assignments as it did in *NLRB v. Radio and Television Broadcast Engr. Union, Local 1212 (CBS)*, 364 U.S. 573 (1961).

the approach was one of limiting the right of a union to force a change in a work assignment by establishing a method by which the underlying jurisdictional dispute between the unions or competing employee groups would be settled.

It is at this point that the Board and Employer Interveners misconceive the statutory scheme. In brief both contend the employer "obvious[ly]" must be a party to any agreed upon method of settling jurisdictional disputes under § 10(k), but we submit that it is not really what Congress intended. (Emp.Br. 14; Bd.Br. 14).

Congress wanted to insulate employers from the fallout of interunion jurisdictional quarrels,<sup>5</sup> but had no intention of giving an employer carte blanche to assign work contrary to an interunion settlement and still get the protection of Section 8(b)(4)(D). *NLRB v. Radio and Television Broadcast Engr. Union, Local 1212 (CBS)*, 364 U.S. 573, 579 (1961). The way Congress analyzed this problem was that an employer faced with competing claims of unions should be more concerned with getting his work done than picking sides in the dispute. Therefore if the disputing unions could agree on a settlement the employer's work would proceed.

In other words, the logical approach to Section 8(b)(4)(D) and Section 10(k) is that if the unions or the two employee groups are able to agree between themselves to a settlement of their dispute, or if they provide a voluntary means for settlement, such as the Joint Board, then the employer must abide by the decision of the Joint Board or lose the protection of Section 8(b)(4)(D).

This does not mean that an employer can be ordered to assign work to a particular employee group as the result of an agreement or decision to which he was not a party

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<sup>5</sup> See House Rep. *supra*, n. 4 at 314; I Leg. Hist. 463, 480 (Senate Minority Rep. No. 105, Pt. 2, on S. 1126); I Leg. Hist. 615 (Rep. Hartley); II Leg. Hist. 995 (Sen. Lucas); II Leg. Hist. 1012 (Sen. Taft); II Leg. Hist. 1956 (Sen. Ellender); and II Leg. Hist. 1157 (Sen. Smith).

but, on the other hand, the employer cannot refuse to honor the decision of the Joint Board or other voluntary adjustment procedure and then also expect to be protected by Section 8(b)(4)(D) from a jurisdictional strike in support of a decision of the Joint Board.

This is really no different than if an employer refused to comply with a 10(k) decision of the NLRB—he could not maintain his assignment contrary to the Board award and still have Board protection from interference by the union representing the employees who were awarded the work. See *NLRB v. Local 825, Int'l. Union of Operating Engineers*, 410 F. 2d 5, — (3rd Cir. 1969); *Millwrights Local Union No. 1102, United Brotherhood of Carpenters, etc. (Don Cartage Co.)*, 160 NLRB 1061, 1078, n. 19. As long as the charged union is complying with the Board's award, the charge is dismissed. *NLRB Statement of Procedure*, Series 8 as amended, Section 101.36.

Contrary to the opposing arguments, Section 8(b)(4)(D) and 10(k) were not designed to, in effect, let the employer play off one union against another or to let him get the lowest wage rates or best conditions—other sections of the Act are concerned with the bargaining process.<sup>6</sup> The jurisdictional dispute sections take care of the employer who is wringing his hands over the fight between the two unions and he needs relief. Of course, as the Supreme Court in *CBS, supra*, recognized, an employer may not be neutral in a jurisdictional dispute, but simply because he may favor one union or the other does not mean that Congress intended the employer to be a necessary party to a settlement of the dispute. The Supreme Court did not so read § 10(k). 364 U.S. at 577.<sup>7</sup>

<sup>6</sup> For example, Sections 8(a)(5), 8(b)(3), 8(d).

<sup>7</sup> Even those senators opposed to the bill reported out by the Senate Committee on Labor and Public Welfare (S. 1126) agreed that Section 10(k), as proposed by Senator Morse, was a good provision and would encourage unions to set up appropriate machinery in their own ranks for the settlement of jurisdictional disputes "where they properly should be settled." 1 Leg. Hist. 463, 481 (S. Min. Rep. 105, Pt. 2 on S. 1126).

The Board and Employers also attempt to draw comfort from the first two jurisdictional dispute cases decided by the Board, *Lodge 68, IAM (Moore Drydock Co.)*, 81 NLRB 1108 (1949) and *Int'l. Longshoremen's & Warehousemen's Union (Juneau Spruce)*, 82 NLRB 650 (1949) (Bd.Br. 15; Emp.Br. 8). The issue here, however, was not involved in either of those cases.<sup>8</sup> While there the Board held that Section 10(k) applies even where the employer is not neutral, this does not mean that Congress intended the employer to be a party to any settlement procedure. Furthermore, it was in *Juneau Spruce* that the Board held that under Section 10(k), "the opportunity [is] afforded the rival unions to reach a settlement or to agree upon methods for reaching an adjustment of the dispute; . . ." 82 NLRB at 655-56<sup>9</sup> (Emphasis added).

The Board argues that "courts of appeals which have adverted to the issue have reflected the Board's view." (Br. 16). The first case cited for this statement, *NLRB v. Local 825, Int'l. Union of Operating Engineers*, 410 F. 2d 5, (3rd Cir. 1969), involved a situation where both unions and the employer were stipulated to the Joint Board and one union was refusing to comply with its decision on the dispute. The Board did not hold a § 10(k) hearing there but went directly to the § 8(b)(4)(D) complaint proceeding. The Court rejected the union's argument that a § 10(k) hearing was required, regardless of the decision rendered by the Joint Board. The holding of the Court was that a § 10(k) hearing need not be held in all circumstances before the Board proceeds with a § 8(b)(4)(D) complaint. The Court distinguished the instant

<sup>8</sup> See *Herzog v. Parsons*, 86 U.S. App. D.C. 198, 205, 181 F. 2d 781, 788 (1950), for a discussion of the issues involved in *Moore Drydock* and *Juneau Spruce*, *supra*. In *Moore Drydock*, the Board held Section 10(k) applies even where the employer is not neutral and that the dispute involved was not a representation issue under Section 9 of the Act. In *Juneau Spruce* the Board rejected the argument of the company that § 10(k) applies only where there were overlapping certifications or *bona fide* doubts as to representation.

<sup>9</sup> The Board, in *Juneau Spruce*, relied on the language of the Senate Minority Report discussed in note 7, *supra*. See 82 NLRB at 656.

case, in a footnote, but it is clear the arguments made here were not advanced there.

The other cases cited by the Board are equally inapplicable: *New Orleans Typographical Union v. NLRB*, 368 F. 2d 755 (5th Cir., 1966) involved a situation where one union forced the employer by injunction suit to arbitrate a jurisdictional dispute. The other union claiming the work did not take part in that arbitration. The court, in finding no voluntary adjustment of the dispute under § 10(k), seemed to rely on the fact that the employer did not "voluntarily" agree to the arbitration. 368 F. 2d at 763. In any event, there was no agreement between the unions for a voluntary adjustment and, therefore, the argument advanced here was not discussed at all. In *NLRB v. Local 825, Int'l. Union of Operating Engineers*, 326 F. 2d 213 (3rd Cir. 1964), the Court found that neither the employer nor one of the unions involved in the dispute had agreed to the voluntary adjustment of the dispute. In *Local 450, Int'l. Union of Operating Engineers v. Elliott*, 256 F.2d 630 (5th Cir. 1958), the Operating Engineers was also attempting to prove that both the employer and the Painters were stipulated to the Joint Board. Its position was different than that advanced here, and of course, the Court did not rule on the issue in this case.

The Employer Intervenors cite many of the same cases although attributing to them greater relevancy than does the Board (Br. 10). In addition, these intervenors rely on *Quinn*, and *Riggers and Machinery Erectors, Local 575 v. NLRB (Don Cartage Co.)*, from this Court.<sup>10</sup>

In *Quinn*, the Board held an extensive § 10(k) hearing, but before issuing a decision allowed the charged union to enter into a settlement agreement of the § 8(b)(4)(D) charge. The notice of hearing was quashed and the charge dismissed. The Board refused to issue a § 10(k) award in

<sup>10</sup> Not reported in Federal Reporter System. Nos. 19673 and 19686, March 29, 1966, 61 LRRM 2690.

hopes that the then newly reconstituted Joint Board would be able to settle the dispute and that the employers would agree to be stipulated to the Joint Board or at least be willing to follow its decision on the work dispute. The employer sought review in this Court on the basis that the Board reverted to its pre-*CBS* policy of not making an affirmative award and that the Board's action was unfair to the parties considering the time, effort and money that went into the Section 10(k) proceeding. While the case was pending in this Court the Board requested a remand for the purpose of taking evidence to show that the employer was in fact bound to the Joint Board. 61 LRRM at 2692. At the remand hearing, the Millwrights (the charged union) took the position that the Board should find the employer stipulated to the Joint Board, or if not, decide the dispute. (Reply, Br. of *Don Cartage*, p. 3 in Nos. 19673 and 19686).

Clearly then, in *Quinn* the issue was the failure of the Board to exercise its jurisdiction. The Millwrights did not argue there, as the Union does here, that the Board had no jurisdiction to hold a § 10(k) hearing because the two unions were bound by the Joint Board. Obviously, then, *Quinn* does not support the Employer's contention. This is particularly true in view of the language of *CBS*, in which the Court clearly indicated that the parties to the dispute were only the two disputing unions. 364 U.S. at 577. *Quinn* involved very unique circumstances, and interestingly, although the Board was obviously aware of that case, it was not cited in its brief here.

In sum then, contrary to the arguments advanced by the Board and Intervenors, the issue presented here has not been decided by any other court, and in fact, it does not appear that any other court was ever squarely presented with the issue as it arises here, or considered it.

Contrary to the Board (Br. 17), the Plasterers do not claim the Employer is "irrelevant" and clearly pointed this out in its opening brief (Br. 22). The Plasterers



simply argue that the employer's participation or non-participation is not controlling if the disputing unions are bound by the private adjustment machinery. Contrary to the arguments advanced, his participation is not vital because the disputing unions are certainly in a position to advance any arguments he would, and of course, his assignment is evidence of which craft he favors. If the employer feels that his position will not be adequately expressed by either union, he can, of course, participate in the Joint Board proceedings. (See Appendix to Reply Br. 24)

The charging party-employer's right to intervene in court proceedings under *UAW v. Scofield*, 382 U.S. 205 (1965) is not affected by the Plasterers' position. The Board, under its interpretation of Section 10(k), quashes the notice of hearing when the employer responsible for the assignment of the work is bound to the Joint Board.<sup>11</sup> That employer, however, does not necessarily have to be the charging party, as was the case in the Texas State dispute. In other words, if Texas State, the employer responsible for the assignment, was stipulated to the Joint Board, the Board would have quashed the notice of hearing whether or not Southwestern, the charging party, was stipulated to the Joint Board.

Furthermore, if the union refused to comply with the decision of the Joint Board, the Board would proceed immediately to a § 8(b)(4)(D) hearing and during that proceeding the employer-charging party could participate. *NLRB v. Local 825, Int'l. Union of Operating Engineers*, 410 F. 2d 5 (3rd Cir. 1969).

The Employers argue the definitions of jurisdictional disputes expressed in the House, are not relevant in deciding what Congress meant by the word "parties" in § 10(k), because there was no § 10(k) in H.R. 3020 as it passed the

<sup>11</sup> See *Local 173, Wood, Wire and Metal Lathers Int'l. Union (Newark and Essex Plastering Co.)*, 121 NLRB 1094, 1103 (1958) and *Bay County District Council of Carpenters, et al. (Associated Home Builders of San Francisco, Inc.)*, 115 NLRB 1757, 1766 (1956); Cf. *Local 825, Int'l. Union of Operating Engineers*, 128 NLRB 725 (1960).



House (Br. 19). On the contrary, this supports the Plasterers' interpretation because it establishes the framework in which § 10(k) was considered. These House definitions define the problem that Congress wanted to solve, and the approval of Senator Morse's § 10(k) proposal demonstrates that the Congress was satisfied that his proposal supplied the answer.

We find it difficult to understand how the Employers here can imply that Senator Morse, with his extensive background in labor-management relations, and his experience on the War Labor Board did not, in effect, fully grasp the meaning of a jurisdictional dispute.<sup>12</sup> (Br. 20). As we pointed out in our opening brief, his definition is consistent with that of other members of Congress, the Supreme Court in *CBS* and the Board. It is a dispute between two unions or groups of employees over certain work. It is not a dispute between an employer and a union as the Employers contend (Br. 20). In fact, when the Board finds a dispute is really between an employer and a union, rather than two unions (or groups), it will quash the § 10(k) notice. *Wood, Wire and Metal Lathers Union (Acoustics & Specialties, Inc.)*, 139 NLRB 598 (1962) and *Highway Truckdrivers and Helpers, Local 107 (Safeway Stores, Inc.)*, 134 NLRB 1320 (1961).

The argument that the Supreme Court's definition of parties in *CBS* must be read in view of the neutrality of the employer there is defeated by the next statement in the Employers' brief that the Court was aware that employers are not neutral in all jurisdictional disputes (Br. 22).

The Board's effort (Br. 21) to distinguish *Local 1905, Carpet, Linoleum and Soft Tile Layers (Southwestern Floor Co.)*, 143 NLRB 251, a case relied upon by the Plasterers in its opening brief (Br. 28), is unavailing. It argues

<sup>12</sup> Senator Morse's statements are highly important in interpreting "parties," because as the Supreme Court said in *NLRB v. Fruit and Vegetable Packers and Warehousemen, Local 760, etc.*, 377 U.S. 58, 66 (1964), "It is the sponsors that we look to when the meaning of the statutory words is in doubt."

that the time of the disclaimer was the controlling factor there, and claims it was *immediate*. In fact, the disclaimer did not come until two days prior to the § 10(k) hearing and several weeks after the Painters picketed the jobs in question. 143 NLRB at 254.

The Board's conclusion from its discussion of *Local 1905, Carpet Layers, supra*, that "it is only when the dispute is protracted that the Board follows its regular proceedings under Section 10(k)" (Br. 21) appears to be inconsistent with its other statements that the Act requires it to hold a § 10(k) hearing unless the employer participates in the voluntary settlement. If the Board means what it says in its brief, it would quash the notice of 10(k) hearing if the two disputing unions can quickly agree on a settlement, but if it takes a long time for settlement, then the employer must participate. We fail to find any justification in the Act for this distinction.

Finally, both the Board and Employers urge that the administrative interpretation followed by the Board for so long should not be changed (Bd.Br. 18; Em.Br. 17, n. 21). The Board made the same argument in *CBS* and there the Court rejected it. Here, where we are concerned with the same section of the Act as that in *CBS*, where the Board's interpretation of the word "parties" has not squarely been ruled upon by any court, where it is contrary to the meaning given the term by the Senator who proposed § 10(k), and even contrary to its own early interpretation of "parties" in *Juneau Spruce, supra*, and where the Board's interpretation has been attacked by several commentators, the Board's interpretation simply cannot be accorded any substantial weight.

Although an administrative agency's interpretation of the statute under which it operates has been given consideration by the courts, that should not obscure the fact that reiteration of an incorrect interpretation does not make it correct. Most recently, the Supreme Court held that an agency's position that it did not have certain power

under its act, and the fact that the agency had even requested Congress to grant it such power, did not prevent the Court from construing the power to already be granted by existing statute. *FTC v. Dean Foods Co.*, 384 U.S. 597, 610-12 (1966); *United States v. du Pont & Co.*, 353 U.S. 586, 590 (1957). Therefore, the fact that Congress never proposed a legislative change to the Board's treatment of the term "parties" when it was considering other changes to the Act, in no way supports the Board's erroneous interpretation of the statute.<sup>13</sup> See *FTC v. Dean Foods Co.*, *supra*.

Finally, the Supreme Court in *CBS* reversed the Board's interpretation of § 10(k) despite the fact that Congress had been presented with, but did not adopt, proposals to change the Board's interpretation of § 10(k). The Board's argument here is no more persuasive.

The Board (Br. 19) cites the legislative history of the 1959 amendments which shows that Congress considered authorizing certifications without elections in the construction industry, but this was rejected on the ground that it might alter the successful operation of the Joint Board. The Board reads this as an indication of support from Congress for its interpretation of "parties," but really this is just as much support for the contrary interpretation, because from 1948 to 1959 as well as to the present, the Joint Board has consistently followed the practice of hearing disputes between two unions, even though the employer was not stipulated,<sup>14</sup> and this fact was known to the Board and public alike.<sup>15</sup> (See Reply Br. of BTB as *amicus curiae*).

<sup>13</sup> See Board brief at pp. 18, 19.

<sup>14</sup> See, e.g., *United Brotherhood of Carpenters, etc., Local 581 (Ora Collard)*, 98 NLRB 346 (1952) and *Newark and Essex Plastering Co.*, *supra*, n.11.

<sup>15</sup> The argument made by the Tile Setters that the Joint Board is not a voluntary method of settlement between two unions is completely without merit. It is based upon assumption without foundation and has been fully answered in the reply brief of the Building and Construction Trades Department, AFL-CIO, *amicus curiae* in this case. We may add that both the Plasterers and the Tile Setters are affiliates of that Department.

### III. The Plasterers Should Have Been Awarded the Work in Dispute on the Merits

Counsel for the Board and the Union intervenors persist in changing the Plasterers' claim to a demand for an additional unnecessary coat of mortar, and then they proceed to show why it was unfeasible, inefficient, and improper to have an additional coat installed (Bd.Br. 8, 33; U.Br. 8).<sup>16</sup>

These arguments prove nothing, however, because the record is clear that the Plasterers never claimed that an additional coat of mortar be applied on either job—it claimed the so-called “float coat” installed by Tile Setters on both jobs, which the Plasterers call a “plumb coat,” and which was allowed to dry before tile was installed. In its request for a clarification from the Joint Board on the Library job, the Plasterers specifically stated it is the second coat of mortar on metal lath and the first coat on concrete block that are in dispute (A. 420, 421). The “float coat” is all that was claimed in the 10(k) case also (A. 51-53).

The Board, in discussing the conventional method of installing tile, argues that one or more of the coats of mortar listed, that is, the scratch coat, brown coat or setting bed can be deleted. It concludes that in neither the Library nor the Rainbo jobs was a brown coat applied (Br. 8). This statement is incorrect. The coat in issue on both jobs was used only to plumb, rod and square the walls, and whether

<sup>16</sup> The Board claims that its Section 10(k) award must be affirmed unless arbitrary or capricious (Br. 24-26). In *NLRB v. Int'l. Die Sinkers' Conference*, 402 F. 2d 407, 411 (7th Cir., 1968), the Court stated the Board's 10(k) determination should not be disturbed if it is based “on the totality of factors involved . . . .” The Fifth Circuit, in a similar context, held that “the discretion of the Board is not unlimited. We have the power, as in § 9(b) cases, to determine ‘whether there is substantial evidence to support the Board or its order oversteps the law.’” *NLRB v. Local 991 Int'l. Longshoremen's Ass'n.*, 332 F. 2d 66, 70 (5th Cir. 1964, quoting from *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 491 (1947)). Here, of course, it is the Petitioner's claim that the Board did not consider the totality of factors involved, and it failed to carry out its function under § 10(k) as directed by the Court in *CBS*. This, then, is not simply a case of deciding whether the Board was arbitrary in weighing the various factors, as the Board seems to infer.

it is called a brown coat or a plumb coat, as the Plasterers claim, or a float coat, as called by the Tile Setters, its function is the same as the brown coat in the conventional method, concededly the work of the Plasterers, and therefore under the 1917 Agreement (A. 432), 1924 Decision of Record (A. 433), the Joint Board award (A. 424), and the Guide Specifications (A. 381), this is the work of the Plasterers.

The Board seems to be arguing that the introduction of dry-set mortars in the late 1950's somehow eliminated the necessity for the Plasterers' plumb coat of mortar behind tile. The Board never explains just how this innovation affected the Plasterers' plumb coat, since the walls still have to be plumb and level, and all recognized standards for the use of the dry-set mortars provide that Plasterers are to perform these functions. (A. 336, 341; 352, 354).

The standards also refer to a dry-set mortar installation as the "thin-set method" and, as its name clearly implies, the "thin-set method" is a substitution for the conventional thick mortar setting bed formerly installed by the Tile Setters in the conventional method. The Tilework Guide published by the Tile Council of America makes this crystal clear when it states "A 3/32-inch thick layer of Dry-Set mortar has twice the bonding strength of one inch thick conventional mortar bed" (A. 346). The manufacturer of the dry-set mortar used on the Rainbo Bakery also states in its Architectural Manual that "Setting Bed to Receive Tile: Portland cement thin-set mortar . . . . Minimum thickness of setting bed to be 3/32" to 1/8"." (A. 352, 353).

Obviously then, this new innovation in the tile industry actually resulted in the elimination of the Tile Setters' old setting bed and its replacement by the new dry-set mortars.

The whole advantage of the dry-set mortars is that the walls are already plumb as a result of the installation of the Plasterers' brown coat and the dry-set mortar allows

the Tile Setters to set the tile directly on the dry plumb coat without the necessity of installing a thick mortar setting bed. In addition, the dry-set mortar coat weighs less than the thick conventional setting bed since, of course, it is much thinner (A. 360, 361).

Similarly, the Board is incorrect when it argues that the dry-set mortar is actually a substitute for the neat cement,<sup>17</sup> which was used by the Tile Setters in the conventional method (Br. 9, 10). In the conventional method, a thin layer of neat cement ( $1/32''$  to  $1/16''$ ) would be applied over a *wet* or *plastic* setting bed and then the tile set in the setting bed (A. 322, 324; 136, 137, 145, 162). Neat cement, however, cannot normally be used to install tile over a *dry* coat of mortar, such as was used on both the Library and Rainbo Bakery jobs (A. 322).<sup>18</sup> A *wet* setting bed is necessary with neat cement so that a solid bond can be achieved between the setting bed and the tile before drying takes place (A. 151, 152). If neat cement could be used with *dry* walls, there would not have been any reason to have a thick mortar setting bed installed by the Tile Setters in the conventional method. The tile could have been set directly on the plumb coat by the use of neat cement. A wet wall is not necessary with dry-set mortar because the additives in it provide a chemical bond in place of the mechanical bond obtained with the wet thick setting bed in the conventional method (A. 359, 360).

Of course, the dry-set mortars can be used in place of neat cement on a wet coat of mortar, but practically, there is no reason to use the dry-set mortars rather than neat cement in that situation (A. 151, 323). However, the neat cement *cannot* be used in place of the dry-set mortar on a dry wall.

<sup>17</sup> Pure Portland cement and water mixed to a creamy consistency (A. 323).

<sup>18</sup> The Tile Council of America states: "The neat cement bond coat can be used only while the cement mortar is fresh and plastic, while the thin-bed materials are applied after the mortar bed has cured and dried out" (A. 362). The Tile Setters appears to concede this in its brief (Br. 5).

Also, the dry-set mortars are generally applied in a thicker coat than neat cement (up to  $\frac{1}{4}$ " ), with a notched trowel, and can be used for straightening irregularities in the wall (A. 295, 296, 350, 358, 360).<sup>19</sup>

In effect, what has happened is that the Tile Setters have lost their thick mortar setting bed through the introduction of dry-set mortars and are now attempting to fall back and capture the Plasterers' plumb coat to replace the work that they lost. In an effort to obtain this work, the Tile Setters argued vigorously during this hearing that the "plumb" or "float" coat behind their tile is the most important part of the installation and required Tile Setters' skills. The Board rejected this argument, however, because it found the Plasterers were equally as skilled as the Tile Setters in installing the "plumb" or "float" coat (A. 19).<sup>20</sup>

In addition, the record shows that approximately 60-80% of the tile contractors' business is the installation of tile over backings prepared by others (A. 129, 145, 182).<sup>21</sup> Obviously then, general contractors and owners don't feel the Tile Setters must install the mortar coat to obtain an acceptable job.

Contrary to the Board (Br. 34), the Martini job was not a one-coat operation, as that term is commonly understood in the trade. The American Standard Specifications and the Tile Setters' own expert witness agree that the "one-coat" method is the installation of metal lath to a wall and

<sup>19</sup> The argument is also advanced by the Board that the quarry tile in the stairwells at the Library could not be installed on a wet bed because of its weight (unknown). (Br. 6). However, Tile Setters' witnesses testified that quarry tile can be installed the same day as the mortar coat is applied (A. 87, 88, 159); the American Standards Specifications require it to be installed in a plastic bed (A. 331); and the Anderson Library specifications required the quarry tile to be installed in a plastic bed (A. 345).

<sup>20</sup> Counsel for the Board appears to attack this finding of the Board (Br. 8).

<sup>21</sup> On other jobs, the backup may be a plumb coat of Portland cement mortar or gypsum plaster installed by the Plasterers, or tile is set directly to sheet-rock, concrete block, plywood, etc., with dry-set mortar or adhesives (A. 361).



then the installation of a mortar coat and the tile in one operation in the *same day*. In other words, the tile is installed in the mortar coat while it is still wet (A. 64, 324, 325). If Martini had performed the Rainbo Bakery job in the above method, the Plasterers would not have claimed the mortar coat, since, as explained previously, when the coat is being used both to plumb the walls and as a setting bed for the tile, the Plasterers do not claim it. Actually the Rainbo Bakery job was simply another thin setting bed job. The mortar coat was applied over the lath only to plumb the wall (A. 59, 100). That coat was allowed to dry for several days and then the tile was installed in a dry setting bed called L&M (A. 59, 113).

The Board argues that the Employers' assignments were consistent with their collective bargaining agreements with the Tile Setters and that this was a proper factor for it to consider (Br. 26). This case presents a perfect example of why collective bargaining agreements are poor guides to use in jurisdictional disputes—particularly in the construction industry.

The current national collective bargaining agreement between the Employers and the Tile Setters was entered into January, 1966 (A. 429). As noted by the Board in its brief, the agreement appears to specifically cover the type of work in dispute here (Br. 26). However, it is interesting to note that a prior collective bargaining agreement between the Employers and the Tile Setters was not as specific, and while that agreement or a similar one was in force (See Appendix to Reply Br. 24, 25), the NLRB considered its first case involving the dispute between the Plasterers and Tile Setters over the installation of the plumb coat of mortar. See *Operative Plasterers, etc., Local No. 65 (Twin City Tile and Marble Co.)*, 152 NLRB 1609 (1965). Partly as a result of that case, the tile contractors and the International Union to which the Tile Setters belong decided their collective bargaining agreement was not precise enough, so they jointly agreed upon a very specific clause to take care of situations like that in the *Twin City*



case and included it in the 1966 agreement (See page 25 *infra*).

With this background, the collective bargaining agreement should not be accorded any weight. Since the tile contractors would like to do the disputed work, and the Tile Setters would like to do the disputed work, they agreed between them that it would be assigned to the Tile Setters. This doesn't prove anything. The work in dispute also is covered within the Plasterers' collective bargaining agreement with its contractors, but this again is no greater support for its position than is the collective bargaining agreement of the Tile Setters.

We submit the Board should have followed the admonition it gave in *Millwrights Local Union No. 1102, United Brotherhood of Carpenters, etc., (Don Cartage Co.)*, 160 NLRB 1061, 1076 (1966):

"The incorporation in the contract . . . . of self-serving jurisdictional claims, . . . commands no substantive weight in the resolution of a dispute of the kind before us. It bears at most on the factor of employer assignments, . . ."

Board counsel's argument in explanation of why no weight should be given to the Guide Specifications (A. 381) prepared by the Texas Lathing and Plastering Contractors Association (TLPC) and the Texas Ceramic Tile Contractors Association (TCTC) is interesting, but it was not the explanation utilized by the Board in its decision (Br. 28, 29). The Board gave no explanation for completely ignoring the Guide Specification, although its relevancy was apparent. In brief, counsel for the Board now tells us that the Guide Specification was not reliable because the group preparing it was dominated by plastering contractors and dry-set manufacturers, and that the evidence fails to show that the Guide represented a consensus of tile contractors or the Tile Setters.

In a similar context, the Supreme Court has admonished that a case cannot properly be reviewed when the Board

fails to articulate reasons for its decisions. This is particularly so when the Board is in an area in which Congress has given it discretion; for then the Court stated "it must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it'." Even though Board counsel, in argument to a court, may rationalize the decision of the Board under review, this is inadequate, for the "courts may not accept appellate counsel's *post hoc* rationalizations for agency action . . . ." *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 443-444.<sup>22</sup> Counsel's rationalization, the Court held, is incompatible with the orderly function of the process of judicial review.

This, we submit, is what has happened in the instant case. The Board did not explain why it did not consider the Guide Specification; it gave us none of the reasons that counsel, in his brief, has relied upon, and the Court should not accept counsel's rationalization as a substitute for what the Board should have done itself.

Moreover, the arguments of counsel for the Board on the Guide Specification are unpersuasive. To begin with, the extensive correspondence between the two Associations demonstrates the Guide Specification is not a product of plastering contractors and dry-set mortar manufacturers, but is exactly what it purports to be: a guide prepared jointly by the tile contractors' committee and plastering contractors' committee (A. 381). Surely the Plasterers had no control over who the tile contractors appointed to represent them. The record shows that the Guide was approved by the Board of Directors of the Texas Ceramic Tile Contractors Association (A. 187-190, 384, 386-388), and it also shows that at least one of the Employers involved here has served in official capacities with the TCTC (A. 135 and see 156). While the Plasterers' evidence does not show specifically whether the tile contractor members of the TCTC did or did not vote on the Specification, such evidence was

<sup>22</sup> Quoting from *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 197 (1941), and *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962).

more readily available to the Employers or the Tile Setters, who could have called an official of the TCTC to refute or explain the Guide. They did not do so and cannot now argue from their own failure to produce such evidence, if it existed.

Finally, we not only have the Guide Specification itself to rely upon; we have the testimony of witnesses that the Guide Specification is still being used by architects in the Houston area (A. 220, 221) and this is evidenced by the fact that the plumb coat is specified in the Plastering Specifications on most all commercial jobs in the Houston area (A. 221, 224).

The Board's attempt to discount the Joint Board's decision on the library job is incredible. To begin with, in its 10(k) Decision, the Board merely mentioned the November 10, 1966 and March 15, 1967 decisions of the Joint Board, held they were ambiguous, and dismissed them. As pointed out in our main brief, the March 15, 1967 decision of the Joint Board particularly, contains no ambiguity and was issued because of the distorted interpretation applied to the November 10, 1966 decision by the Tile Setters (A. 424-426).

In brief, counsel for the Board again supplies a post hoc rationalization for the Board's failure to adequately consider the Joint Board decision. As discussed earlier,<sup>23</sup> however, such arguments are inappropriate at this late date, since it is the Board which is charged with considering all the relevant evidence and making a decision, not counsel. Counsel doesn't even try to show the Joint Board's decisions are ambiguous, as claimed by the Board, but through a tortured process attempts to demonstrate that the Joint Board's division of the work was wrong. He fails. (Bd. Br. 30-34)

Board counsel proceeds from the assumption that the Plasterers' plumb coat in the conventional method provides a "preliminary" plumb to the walls, but nowhere in

<sup>23</sup> See pp. 17, 18, *supra*.

the 1917 Agreement or 1924 Decision is there any reference to the Plasterers doing anything less than "plumb" the wall. There is nothing preliminary about its plumbness and nothing in the Agreement and Decision which states that the Tile Setter, in his setting bed, has to plumb the wall. The Tile Setters' coat is simply to act as a bed for the tile (A. 432, 433). It was these basic jurisdictional documents that the Joint Board has interpreted.

The American Standard Specifications also provide that the walls behind the dry-set mortar setting bed must be "plumb" and that term is defined to mean the "[t]olerance of plane surfaces not to exceed  $\frac{1}{4}$  inch in 8 feet." (A. 341). No reference is made there of the Plasterers' coat providing only a preliminary plumbness to the walls.

Counsel also points out that the 1917 Agreement provides the Plasterers are to scratch the plumb coat when tile is installed in the conventional method, and no scratching is required when dry-set mortars are used (Bd.Br. 33, n. 51). Obviously, if the Tile Setters don't want the plumb coat scratched, the Plasterers won't perform that function<sup>24</sup> (A. 53), but the fact it may be unnecessary does not support the claim that Plasterers have lost the plumb coat. The 1917 Agreement does not say that Plasterers shall only be entitled to plumb the wall if they scratch the plumb coat; in fact, the 1924 National Decision of record does not even mention "scratching" of a plumb coat, rather, it says that "Plasterers shall *prepare or plaster* all walls and ceilings which are to receive tile, . . ." (A. 433)<sup>25</sup> (Emphasis added).

<sup>24</sup> Plasterers' Exhibit 34-0 (A. 403), which is one of the series of photographs, shows a scratched plumb coat under a coat of dryset mortar. As explained during the hearing, these pictures were taken for demonstration purposes and the sample wall used was already scratched. However in the thin-set method, the plumb coat would not be scratched (A. 295, 296).

<sup>25</sup> Decisions of Record take precedent over Agreements of Record in the Building and Construction Trades Department because the former are applicable to all trades, whether a party to the Decision or not, whereas Agreements of Record are only applicable to the parties signatory to the Agreement (A. 302). The 1924 Decision was not rendered by the present Joint Board, but was issued by an earlier predecessor. It was not a job decision but a national decision.

Counsel for the Board again appears to be attacking the findings of the Board when he argues that the Joint Board's division of work is "impractical and less efficient" (Br. 34, n. 53). On the contrary, the Board specifically found that if tile is to be applied over a dry plumb coat of mortar, it is equally efficient to use one craft for the mortar coat and a different craft for the tile (A. 19). This is what the Joint Board found also.<sup>26</sup> (A. 425).

The Joint Board award, contrary to the Board's brief (Br. 33), is certainly applicable to the Rainbo Job also. That may have been a remodeling job, but it was a plumb coat of mortar over concrete block on which tile was set in a coat of dry-set mortar, i.e., the thin-set method, and the Joint Board decision clearly covers it.

Finally, although only the conventional method was in existence in 1917 and 1924, this does not detract from the validity of the Agreement and Decision or their present application to the thin-set method as construed by the Joint Board (See Bd.Br. 31). The Agreement and Decision divide the work involved by *function*, and the Joint Board utilized this functional concept along with efficiency and economy in applying those documents to the thin-set method.<sup>27</sup> This, we submit, was a perfectly logical and

<sup>26</sup> The Board's finding in this respect is supported by the Record. Tile contractors know whether they are going to set the tile the same day, and prior to the advent of the dry-set mortars, the normal practice was to set it the same day as their setting bed was installed. The standard specifications require this (A. 114, 115, 137, 145, 157, 162, 324, 362). On the jobs in issue there was no scheduling problem. Martini didn't even have in stock all the tile he needed for the job (A. 109), and Martini's superintendent testified that the tile contractor knows ahead of time whether he intends to "float" out all the rooms in a building first and then go back and apply the tile after the walls have dried, or whether he is going to apply the tile the same day the mortar coat is installed (A. 127). Finally, variations in temperature do not cause problems either because practically all building specifications, including the Anderson Library Specifications, provide for temporary heat (A. 321, 342).

<sup>27</sup> The consideration by the Joint Board of efficiency and economy of operations belies the implication of counsel that its decision was based solely on a concept of job ownership (Bd. Br. 22). The law review article cited by the Board in this connection was published before the Joint Board was reconstituted in 1965. See *Twin City Tile and Marble Co., supra*, 152 NLRB at 1616.

The job ownership concept has been urged here, not by the Plasterers, but by the Ceramic Tile Institute of America and various tile contractor associations who have filed a brief *amicus curiae* in this case supporting the Board (Br. of Ceramic Tile Inst. of America, *et al.*, 17, 28, 29).

practical approach to the dispute. The Board, however, failed to properly consider the Joint Board award, and in doing so ignored its own stated intent that:

"An award by a joint board of standing and experience, following procedures of fairness and impartiality, cannot fail to be helpful to the Board in making a jurisdictional determination if it is ultimately required to do so." *Millwrights Local Union No. 1102, United Brotherhood of Carpenters (Don Cartage Co.)*, 154 NLRB 513, 517 (1965) rev'd. on other grounds; *Quinn v. NLRB*, 61 LRRM 2690 (D.C.Cir. 1966).

### CONCLUSION

For the reasons stated herein and in Petitioner's main brief, it is respectfully requested that the Board's Section 8(b)(4)(D) Decision and Order and the Section 10(k) Decision and Determination be set aside and enforcement denied.<sup>28</sup>

Respectfully submitted,

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*No. 79*

August 29, 1969

<sup>28</sup> The Ceramic Tile Institute of America and several other tile contractor associations have filed a brief amicus curiae in this Court urging enforcement of the Board's Order. That brief, in several places, alleges that Petitioner's counsel has attempted to mislead the Court. A review of Petitioner's brief adequately rebuts that charge. In addition, the amicus brief relies upon many matters not contained in the record such as various Joint Board awards (pp. 21, 22), wage rates of plasterers and tile setters in several areas of the country (pp. 26, 27) and a "USA Standard Specification For Ceramic Tile Installed with Water Resistant Organic Adhesives" published in 1968. Organic adhesives (mastics or glue) are not involved in this case, and most of the other arguments raised by the amici are equally irrelevant. The remainder have been covered elsewhere in this brief.

## APPENDIX

## Plasterers Exhibit 6

## AGREEMENT

THIS AGREEMENT, renewed and entered into this 1st day of November, 1961, by and between the TILE CONTRACTORS' ASSOCIATION OF AMERICA, Party of the First Part, and the BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, Party of the Second Part, shall become operative on November 1, 1961.

• • • • •

## ARTICLE I

## WITNESSETH:

That in consideration of this Agreement renewed this day, which is to remain in full force and effect until November 1, 1963, unless sooner abrogated by mutual consent of the parties hereto, do each for ourselves and every individual member of our respective organization pledge full compliance with all its terms. This article pertains to all provisions except wages.

## ARTICLE II

Section 1. THIS AGREEMENT pertains to the setting, slabbing or installing of all classes of TILE, whether for interior or exterior purposes, in any public or private building anywhere within the territory of the United States or the Dominion of Canada. This Article is unchangeable during the life of THIS AGREEMENT.

• • • • •

Section 3. • • •

Section 3.

• • • • •

(a) The laying or setting of all tile where used for floors, walls, ceilings, walks, promenade roofs, stair treads, stair-disers, facings, hearths, fireplaces and decorative inserts,



together with any marble plinths, thresholds or window stools used in connection with any tile work; also to prepare and set all concrete, cement, brickwork or other foundations or material that may be required to properly set and complete such work.

• • • • •  
**Texas State Exhibit 1**

**PROCEDURAL RULES AND REGULATIONS OF THE NATIONAL JOINT  
 BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES  
 BUILDING AND CONSTRUCTION INDUSTRY AND APPEALS  
 BOARD PROCEDURES**

• • • • •  
**PROCEDURES USED BY THE JOINT BOARD**

• • • • •  
**C. PROCEDURAL RULES FOR JOINT BOARD MEETINGS**

• • • • •  
 (b) A participating or stipulated employer national association not having direct representation on the Joint Board shall notify the Joint Board whether it elects to designate its representative to participate in the discussion of a particular case.

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**[239] Cross-Examination of Henry Bertolini**

Q. (By Mr. Capuano) Now, Mr. Bertolini, I am showing you what has been marked as P-6, and I ask you if you can identify that? A. Yes.

Q. What is it? A. It's a prior national agreement between the Tile Contractors Association of America and the Bricklayers, Masons and Plasterers International Union of America.

Q. And what is the date on that? A. 1961.

Q. Did that run up to '63, that agreement? A. I could not really answer.



[240] Q. Well, it's on here. I will show you. Does it provide it runs up to '63? A. It may have run up further.

Q. It may have run up further? A. It may have run up through this one. I am not positive.

Q. All right. You think maybe it did, though? A. It could have.

• • • • •  
[246] Q. Now, was there any connection with the inclusion of this language in the '66 agreement, any connection between the inclusion of that language and the prior case out in Minneapolis, the Twin City case? A. I would not know.

Q. You would not know. As a member of the Board of Directors— A. You mean whether we specifically put this in because of the prior case?

Q. Partly or fully. A. I would say no.

Q. The Twin City case never was brought up when you were deciding that you should spell out, as you put it, the intent of the prior agreement? A. Oh, the Twin City case was naturally discussed by the, by our association, but whether this was specifically put in because of that, I would say no.

Q. I didn't say fully, now. I said partly because of that, or fully. A. This would have a bearing. This would have, let's say, equal bearing or no more than any other situations that occurred throughout the country where up until a few years ago there was never a question as to whether the wall was wet or dry. And since the problem had come out, we felt [247] it necessary to spell out that this was our jurisdiction to do the work, regardless. Prior to that there was never any question and therefore it was never spelled out.

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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,073

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PLASTERERS LOCAL UNION No. 79, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

TEXAS STATE TILE AND TERRAZZO CO.,  
*Et Al., Interrenors*

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On Petition To Review and Set Aside and  
Cross-Petition for Enforcement of an Order  
of the National Labor Relations Board

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**BRIEF FOR BUILDING AND CONSTRUCTION  
TRADES DEPARTMENT, AFL-CIO, AMICUS CURIAE**

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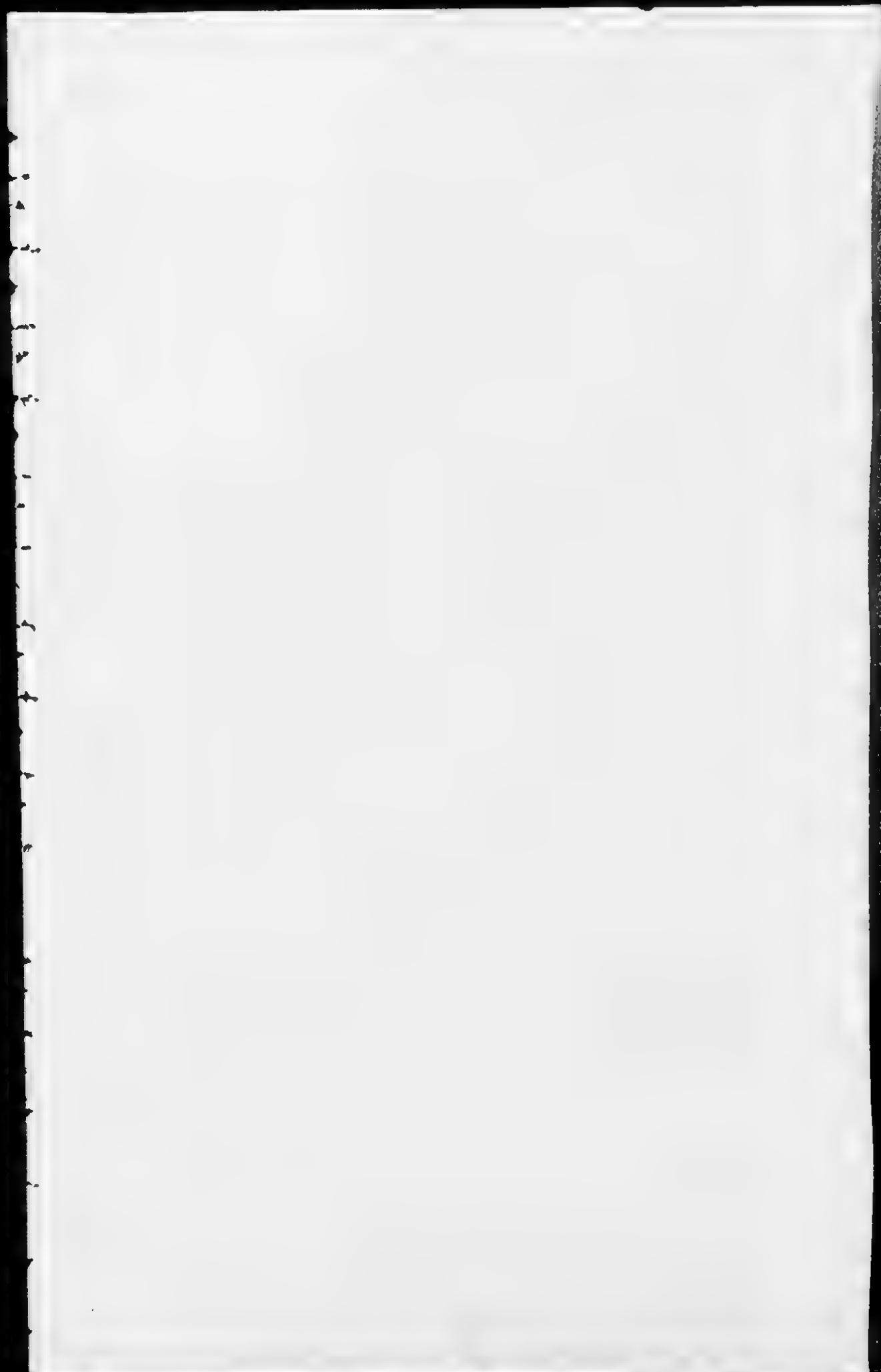
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**BRIEF FOR BUILDING AND CONSTRUCTION  
TRADES DEPARTMENT, AFL-CIO, AMICUS CURIAE**

---

**Interest of the AMICUS CURIAE**

This case arises out of a jurisdictional dispute between Plasterers Local No. 79 and Tile Setters Local Union No. 20 which are affiliated with the Operative Plasterers and Cement Masons International Association and the Bricklayers, Masons and Plasterers' International of America, respectively. Proceeding under Section 10(k) of the Labor-Management Relations Act (the "Act"), the National Labor Relations Board ("NLRB") determined the dispute in favor of the Tilesetters Local. 167 NLRB No. 23, 66 LRRM 1012 (1967). Upon notification that the Plasterers Local would not abide by this determination, the NLRB proceeded



to adjudicate the charges filed under Section 8(b)(4)(D) of the Act and issued an order against the Plasterers Local.

The Building and Construction Trades Department, AFL-CIO, established in 1908, is a labor organization composed of seventeen International Unions customarily engaged and operating in the building and construction industry, including the Plasterers and the Bricklayers International Unions. Among the Department's "objects and principles," as stated in Article II of its Constitution, are the following:

(6) To secure the adjustment of trade and jurisdictional disputes in the building and construction trades industry along practical lines as they may arise from time to time; and such decisions to be final and binding on all affiliated National and International Unions and their affiliated Local Unions.

\* \* \*

(8) To promote industrial peace and develop a more harmonious feeling between employers and employees.

\* \* \*

(10) . . . to protect and advance the interests of the building and construction trades industry.

\* \* \*

(11) To engage in . . . legal . . . activities appropriate for the advancement of the interests of affiliated unions and their members in the building and construction trades industry.

Article X of the Department's Constitution ("Jurisdictional Disputes") provides:

All jurisdictional disputes between or among affiliated National and International Unions and their affiliated Local Unions and employers shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the future by the Department for the settlement of jurisdictional disputes. Said present plan or any other plan adopted in the future shall be recognized as final and binding upon the Department and upon all affiliated

### National or International Unions and their affiliated Local Unions.

The "Plan for Settling Jurisdictional Disputes Nationally and Locally" (hereinafter "Plan"), which is a written agreement first entered into in 1948 by the Department, the Associated General Contractors of America and the National Participating Specialty Contractors' Associations, is the "present plan established by the Building and Construction Trades Department . . . for the settlement of jurisdictional disputes." It is "recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions."

The aforementioned determination under Section 10(k) of the Act was made by the NLRB in the instant case despite (a) a prior determination of this dispute under the machinery provided by the Plan, (b) the provision in Section 10(k) of the Act that the NLRB is empowered to hear and determine the dispute *unless* "parties to such dispute . . . have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute," and (c) the Supreme Court's statement in *NLRB v. Radio and Television Broadcast Engineers Union*, 364 U.S. 573, 577, 580 (1961), that a major Congressional purpose underlying the Sections 8(b)(4)(D)-10(k) statutory complex was the promotion of voluntary, private adjustments of jurisdictional disputes. The NLRB held, over the objection of Plasterers Local 79 and as it has in previous cases, that it will not quash the notice of Section 10(k) hearing unless the employer making the assignment of the work in dispute has agreed to be bound to the voluntary machinery. This *amicus* brief is addressed to the issues arising out of this interpretation of Section 10(k). The Department does not propose to address itself to the merits of the substantive jurisdictional disputes between the two unions.

The problem of jurisdictional disputes is a serious one, affecting unions, employers and the public. By virtue of the

Plan, the Department has been involved in the operation of a twenty-year-old system which has rendered decisions on jurisdictional disputes between unions whether or not the employers making the assignment of disputed work are bound thereto.

Existence of this system has resulted in thousands of job decisions and the rapid elimination of many work stoppages. The stability of this system, which is essential to the maintenance of industrial peace in the building and construction industry, is being threatened by the ruling of the NLRB which encourages forum shopping and the effective withdrawal of jurisdictional disputes from the scope of the private machinery.

### **DESCRIPTION OF THE "PLAN FOR SETTLING JURISDICTIONAL DISPUTES NATIONALLY AND LOCALLY"**

#### **General Statement**

Jurisdictional disputes have been a major problem in the construction industry, and in other industries, since the beginning of this century. Prior to 1947, and beginning with the formation in 1897 of the National Building Trades Council, the forerunner to the present Building Trades Department of the AFL-CIO, many attempts were made within the structure of the building trades unions to privately settle jurisdictional disputes.<sup>1</sup> During World War I, the National Board for Jurisdictional Awards was established by the Department. This was the first national joint body composed of representatives of construction unions and em-

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<sup>1</sup> See Dunlop, "Jurisdictional Disputes," NYU 2d Ann. Conf. on Labor 477, 494 (1949); Haber and Levinson, *Labor Relations and Productivity in the Building Trades*, 234 (1960); Rains, "Jurisdictional-Dispute Settlements in the Building Trades," 8 Lab. L. J. 385 (1957); Strand, *Jurisdictional Disputes in Construction: The Causes, The Joint Board, and the NLRB*, 61 (1960).

ployer groups.<sup>2</sup> After this Board failed, several other methods were later tried, including a referee system in the 1930's.<sup>3</sup> As the Supreme Court stated in *NLRB v. Radio and Television Broadcast Engineers Union*, 364 U.S. 573, 580 (1961), "Each of these efforts [in the construction and other industries] had helped some but none had achieved complete success. The result was a continuing and widely expressed dissatisfaction with jurisdictional disputes" which led to the enactment of Sections 10(k) and 8(b)(4)(D) in the Labor-Management Relations Act of 1947. In 1948, pursuant to the encouragement of Congress as expressed in Section 10(k) of the Act, the "Plan for Settling Jurisdictional Disputes Nationally and Locally" was established. The Plan is an agreement at two levels. First, it is the procedure binding on all the International Unions which make up the Building and Construction Trades Department, AFL-CIO (hereinafter "Department") pursuant to Article X of the Constitution of the Department. Second, it is an agreement among the Department, the Associated General Contractors of America and various national specialty contractor associations. The Plan has been reviewed and revised from time to time since 1948; the current agreement was approved by the General Presidents of the Department's International Unions on January 13, 1965, and signed by representatives of the participating organizations at the White House on February 2, 1965. This revised Plan became effective April 1, 1965. The Plan is contained in a book commonly and hereinafter referred to as the "Green Book," published by the Department. The Procedural Rules and Regulations under the Plan are contained in a book commonly and hereinafter referred to as the "Blue Book." These books are attached hereto in Appendices A and B, respectively.

The Plan provides for three different boards: (1) the

<sup>2</sup> Strand, *supra* note 1, at 64.

<sup>3</sup> *Id.* at 67, 68. See also Dunlop, *supra* note 1, at 494-95.

National Joint Board for the Settlement of Jurisdictional Disputes, created in 1948, to consider particular disputes arising on specific jobs and to render job decisions applicable to the particular job (or, in some situations, locality) according to standards specified in the Plan; (2) the Appeals Board, created in 1965, to consider requests for an appeal from job decisions of the National Joint Board and from three recognized local boards in New York, Chicago and Boston; and (3) *ad hoc* Hearings Panels, provided for from the outset of the Plan in 1948, to make decisions involving particular disputed issues on a national basis. This machinery also operates at each level to encourage the voluntary settlement of jurisdictional disputes by direct negotiations and mediation.

#### **Provisions of the Plan and the Procedural Rules and Regulations**

*The Joint Negotiating Committee*—The Joint Negotiating Committee is the bargaining group delegated by the signatories to the Plan which drafted the Plan in the first instance and which meets on a regular basis to review and draft revisions. It also has specific functions in the routine administration of the Plan, to wit: (1) to select the Chairman of the National Joint Board and the Impartial Umpire of the Appeals Board and the Hearings Panels (Green Book, Art. II, Section 1, pp. 2-3); (2) to approve or reject procedural regulations and administrative practices established by the Joint Board, and, *sua sponte*, to revise such regulations and practices (Green Book, Art. II, Sec. 1, pp. 3-4); (3) to approve or reject rules of the Appeals Board as to the types of cases which it will accept for review (Green Book, Art. II, Sec. 5, pp. 5-6); and (4) to approve or reject procedural regulations established by the Appeals Board (Green Book, Art. II, Sec. 5, p. 6).

*The National Joint Board*—The National Joint Board for the Settlement of Jurisdictional Disputes consists of five

members—one Impartial Chairman, one “Labor Member” from the basic trades, one “Labor Member” from the specialty trades, one “Employer Member” from the Associated General Contractors and one “Employer Member” from the signatory associations of specialty contractors. No “Labor” or “employer” member may participate in any case where the trade union or employer of which he is an officer or representative is involved in the dispute. To this end, each “labor” and “employer” member has an alternate member. (Green Book, Art. II, Sec. 1, pp. 1-2.)

In making job decisions, the Joint Board utilizes the following criteria. “Decisions and Agreements of Record” as set forth in the Green Book; valid agreements between affected International Unions attested by the Chairman of the Joint Board; established trade practice; and prevailing practice in the locality. (Green Book, Art. III, Sec. 1(a), p. 6.) It is also provided that the Joint Board should not ignore the interests of the consumer in settling jurisdictional disputes and should give due regard to such factors as efficiency and economy of operation. (Green Book, Art. III, Sec. 1(f), p. 7.)

Initiation of the Joint Board machinery is by the referral to it of jurisdictional disputes in the building and construction industry by (1) any of the International Unions who are or whose affiliates are involved in the dispute, (2) an employer directly affected by the dispute on the work in which he is engaged, or (3) a participating organization representing such employer. (Green Book, Art. II, Sec. 4, p. 5.)

When the dispute is submitted to the Joint Board by a Union, notice is given by the Board to the affected employer, and he is requested to furnish a full description of the disputed work. (Blue Book, p. 12.)

Where the International Unions engaged in the dispute have established procedures for the adjustment of jurisdictional disputes without resorting to Joint Board proce-

dures, they are allowed a reasonable length of time as determined by the Chairman of the Joint Board in which to effect a settlement. (Blue Book, pp. 12-13.)

International Unions engaged in the dispute are required to state in writing to the Joint Board the basis for their respective claims of work. (Blue Book, pp. 10, 11.) The Union not referring the dispute is allowed five business days in which to state its position. (Blue Book, p. 11.)

If, during the course of consideration of a dispute, a majority of the members of the Joint Board conclude that there is a substantial and material question of fact which cannot be resolved on the basis of the available evidence, a committee of the Joint Board is appointed by the Chairman to investigate and report the facts to the full body. This report must be forwarded to the Joint Board within fourteen days.

In cases where International Unions and signatory or stipulated employer national associations do not have direct representation on the Joint Board hearing a specific case, such employer associations, and such unions, where such unions have referred the dispute to the Board or the Board determines that their positions are required, are entitled to participate in the Board's discussion of such case. (Green Book, Art. III, Sec. 1(e), p. 7; Blue Book, p. 17.)

Any contending International Union or affected employer has the right to a reconsideration of a Joint Board decision by the submission of additional written evidence or by oral hearing. The Unions, and, in cases where the request for reconsideration is made by an affected employer, the employer, are given the opportunity to present written evidence or be heard and present witnesses. A request for reconsideration must be submitted within ten working days after the original decision. (Blue Book, pp. 14-15.)

The Joint Board may, at its discretion, hold oral hearings on repetitive disputes not governed by a "decision or agreement of record" for the purpose of rendering a deci-



sion applying in a locality as opposed to the usual decision limited to the specific jobs with respect to which the dispute before the Board has arisen. The Joint Board will consider cases for the application of this special procedure made by an International Union, a signatory national association or a stipulated local contractors' association. (Blue Book, p. 18.)

Necessary to an understanding of the Plan are the provisions dealing with work stoppages and picketing. The Plan states: "Pending a decision by the Board or such settlement as may be arrived at through the office of the Chairman of the Joint Board, there shall be no stoppage of work arising out of any jurisdictional dispute. Members of organizations affiliated with the Building and Construction Trades Department shall continue to work on the basis of their original assignments." (Green Book, Art. V, Sec. 1, pp. 9-10.) When an International Union refers a jurisdictional dispute and its members remain off the job or hold up disputed work by picketing, processing for Joint Board decisions does not start until the International Union has returned its members to work. When a union remains off the job or establishes a picket line forcing an employer to refer a jurisdictional dispute, and the Joint Board decides that the work in dispute is properly the work of the striking or picketing trade, the effective date of the Joint Board decision is delayed by the number of work days the work stoppage or picket line was in effect. During the delay period, the disputed work proceeds in accordance with the employer's original assignment. (Blue Book, p. 12.)

In addition to the functions described above, the Joint Board may at its discretion and after a conference between contesting unions refer a repetitive dispute which it finds not to be governed by a decision or agreement of records to the Impartial Umpire for mediation and the establishment of a hearings panel and a national decision. (Green Book, Art. III, Sec. 5, p. 8.)



*The Appeals Board*—Like the National Joint Board, the Appeals Board consists of five persons—an Impartial Umpire, one labor member from the basic trades, one labor member from the specialty trades, one employer member from the Associated General Contractors, and one employer member from the signatory associations of specialty contractors. Each labor and employer member has an alternate member. The labor members are either General Presidents of the International Unions affiliated with the Department or elected general officers of such unions designated by their respective General Presidents. (Green Book, Art. II, Sec. 2, p. 4.)

The functions of the Appeals Board lie in two areas: To decide appeals from decisions of the National Joint Board and to consider requests for the referral of disputes to a Hearings Panel for a decision on a national basis.

With respect to the first function, the Plan provides in pertinent part: "The Appeals Board is empowered to review and decide any appeal from a decision or ruling of the National Joint Board . . . and such decision of the Appeals Board shall be final. The jurisdiction of the Appeals Board shall be discretionary." (Green Book, Art. II, Sec. 5, p. 5.) A request to consider an appeal may be filed with the Appeals Board by (a) any of the International Unions engaged in the dispute; (b) employers involved or directly affected by the dispute; or (c) national contractor associations with members involved or directly affected by the dispute. (Blue Book, p. 26.) A request to consider an appeal must be filed no later than three working days after the Joint Board's decision. This request must include a statement of the reasons for the appeal. (Blue Book, p. 27.) A request to consider an appeal from a decision of the National Joint Board constitutes a stay of such decision. (Blue Book, p. 27.)

In exercising its discretion as to whether or not to accept a particular appeal, the Appeals Board gives consideration

to such factors as the significance of the dispute, the frequency with which such disputes have arisen, the contribution a decision may make to the resolution of disputes and the improvement of relations and the reasons advanced for considering the appeal. (Blue Book, p. 28.) The Appeals Board must "promptly" review and decide any requests to consider appeals and, where it has decided to accept an appeal, "promptly" set a date for the consideration of the case. (Blue Book, pp. 27, 28.)

With respect to the second function, the Plan provides: "When a dispute is filed with the Appeals Board by a national or an international union, with a specific request for a decision on a national basis which would become part of the record, the Board shall review the request, and if the Board finds it is an issue not already determined on a national basis by a decision or agreement of record, it shall refer the issue to the Impartial Umpire who shall call a conference of the General Presidents of the unions involved for the purpose of determining whether or not a national agreement is possible. If an agreement is concluded and properly signed by the contesting parties and attested by the Impartial Umpire, the terms and provisions of the agreement shall remain in effect as per the provisions of the Constitution of the Department. In the event that the dispute cannot be settled by agreement or is not settled by agreement at the end of six months, the Impartial Umpire shall docket the case for hearing and decision by a hearings panel." (Green Book, Art. III, Sec. 2, p. 7.)

A recent amendment to the Plan (Art. II, Sec. 5, p. 6) provides the Appeals Board with additional powers:

The Appeals Board may, on its own motion, assume jurisdiction over any case at any stage of the proceedings, except a case before the Hearings Panel, either before or after the issuance of a decision, ruling or interpretation of the National Joint Board or of any of the recognized local boards.

*Hearings Panel*—These panels are composed of the Impartial Umpire of the Appeals Board, two disinterested General Presidents of International Unions appointed by the Executive Council of the Building and Construction Trades Department and two disinterested contractor representatives, one appointed by the AGC and one appointed by the signatory national specialty contractor associations. (Green Book, Art. III, Sec. 4, p. 8.)

When a dispute reaches a hearings panel from either the Joint Board or Appeals Board, the Impartial Umpire notifies all General Presidents of International Unions affiliated with the Building and Construction Trades Department and the national participating employers associations, stating the controversy to be considered and that all interested persons will be permitted to intervene. Briefs are submitted and exchanged by all parties to the dispute. (Green Book, Art. III, Sec. 3, p. 8.) The Hearings Panel must consider all pertinent evidence and render a decision if possible within ten days after the conclusion of the hearings. Copies of the Hearings Panel decision are sent to all parties signatory to the Plan. Decisions of the Hearings Panel are not appealable to the Appeals Board and must immediately be accepted and complied with by all signatories to the Plan. (Green Book, Art. III, Sec. 7, pp. 8-9.)

**Operation of the Plan Regardless of Whether the  
Particular Employer Affected by the Dispute is  
Bound Thereto**

The machinery of the Plan is operative and decisions on jurisdictional disputes are rendered thereunder regardless of whether or not the particular employer affected by such a dispute decides to be bound to the Plan.

The national and international unions which are affiliated with the Building and Construction Trades Department, and their local affiliates, are bound to the Plan by

Article X of the Department's Constitution. Some of the employer associations have bound their members to the Plan by stipulation to this effect. Other employer associations have not bound their members to the Plan. In this last category, an employer is bound to the Plan only if he makes an individual stipulation to this effect. An unstipulated employer assumes no obligations under the Plan (see, e.g., "Contractor's Responsibility," Blue Book, pp. 2-5; Green Book, Art. III, Sec. 7, p. 9), but his failure to so stipulate does not, as indicated above, bar the operation of the Plan in the particular dispute between the Unions.

### **ACCOMPLISHMENTS UNDER THE PLAN**

"Considered in light of the previous attempts to establish a method for the settlement of jurisdictional disputes, the Joint Board's accomplishments have been astounding." *Strand, supra* n. 1, at 99.

"The number of work jurisdictional disputes in the construction industry is not one of the industry's bright spots, but, without the Joint Board, the condition the industry would find itself in is unimaginable. There has been a general recognition of the outstanding performance of the Joint Board. It has succeeded in formalizing machinery for the settlement of jurisdictional disputes. Yearly it processes over 600 work assignment disputes. It has reduced the number and duration of disputes and effected settlements of long standing controversies through the medium of agreements between international unions." Patrick C. O'Donoghue, "Jurisdictional Disputes," Fifth Annual Midwest Labor Law Conference (Ohio Legal Center Institute, October 25, 1968) p. 5.19.

With respect to the volume of job decisions rendered by the Joint Board in jurisdictional disputes, between July, 1961 and October, 1968 there have been 3,440 formal decisions. In the first three quarters of 1968, a total of 503 decisions were rendered. See the 1965 and 1967 annual

reports, and the 1968 quarterly reports (dated November 22 and June 18, 1968) by the Chairman of the National Joint Board. By contrast, between July, 1961 and January, 1969, the NLRB issued 290 Section 10(k) determinations in all industries. 27th-32nd Annual Reports of the National Labor Relations Board. See *infra*, p. 15 n.7.

Because of the generally short duration of construction jobs and the necessity to complete various phases on a schedule, time is of the essence and a critical factor in the settling of work assignment disputes in the industry. The Joint Board meets weekly to decide cases and renders approximately thirteen decisions at each meeting. See quarterly reports for 1968 by the Chairman of the National Joint Board. "There is no backlog of waiting cases [before the Board]; any dispute ready for decision by Tuesday of each week will be decided that week. It is possible to have a decision from the Joint Board within a week." P. C. O'Donoghue, *supra* at 5.19<sup>4</sup> See also *Strand, supra* at 103. "Thus, the Joint Board plan meets the requirement for prompt action." *Strand, supra* at 103.

"This conclusion is even more obvious when the time lags in the NLRB procedures are examined." *Strand,*

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<sup>4</sup> Disputes referred to the Joint Board by Wednesday noon of a given week are decided at the weekly Thursday meeting of the following week. Information obtained from the Office of the Chairman of the National Joint Board. Insofar as the Plan's Appeals Board is concerned, which, since its inception in 1965, has reviewed approximately six (6) per cent of the Joint Board's jurisdictional dispute decisions (compare the 8th Report of the Appeals Board to the Joint Negotiating Committee with Table V of the 1967 report and the 1968 quarterly reports by the Chairman of the Joint Board), its decision whether to consider an appeal is made within two weeks from the filing of the request and the determination of an appeal is made within another two weeks. As with the Joint Board, therefore, there is no backlog of cases before the Appeals Board. Information obtained from the Office of the Impartial Umpire of the Appeals Board.

*supra* at 103.<sup>5</sup> "The present practice of the NLRB is intolerable and does not meet the construction industry's needs. Since *CBS*, from the filing of a charge under Section 8(b) (4) (D) to a 10 (k) decision, the Board processes consume an average of 320 days. That procedure settles nothing."<sup>6</sup> Martin F. O'Donoghue, "Jurisdictional Disputes in the Construction Industry Since *CBS*," 52 Geo. L. J. 314, 330 (1964).<sup>7</sup>

In the absence of the Plan, therefore, the resulting expansion in the NLRB's jurisdictional dispute caseload would increase the NLRB's current backlog and postpone the determination of disputes beyond reasonable limits.

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<sup>5</sup> *Strand* states (at 103): "In the eighty-five 10(k) cases decided through fiscal 1958, the mean lapsed time from the filing of the 8(b) (4) (D) charge to the 10(k) determination has been 227 days."

<sup>6</sup> One expert on jurisdictional disputes speculated that construction of a "fair size dam" could be finished before the NLRB rendered a typical decision. See Dunlop, *supra* note 79, at 500. The Board, in *United Ass'n of Journeymen & Apprentices of the Plumbing Indus.*, No. 16-CD-16 (Unreported decision, April 5, 1963) (Tecon Corp.), proved him a prophet. A jurisdictional dispute arose at the beginning of construction of the Eufaula Dam in Oklahoma. After picketing commenced, an 8(b) (4) (D) charge was filed, an extensive hearing held, and eleven months after the briefs were submitted, the Board quashed the notice of hearing after being "administratively advised" that the dam had been completed while the Board was considering the case. *M. F. O'Donoghue, supra*, p. 330 n. 107.

<sup>7</sup> Since 1964 the NLRB has increased the speed with which it processes cases through 10(k) determinations. For fiscal year 1968, 36 10(k) determinations required a total of 172.5 median days from the filing of the charge to the 10(k) determination. For the first six months of fiscal 1969, 19 cases required a total of 185.0 median days. (478 Section 8(b) (4) (D) charges were filed with the NLRB in fiscal 1968. In the first 6 months of fiscal 1969, 256 such charges were filed.) Information obtained from the Office of the Executive Secretary of the NLRB.

### LEGAL ARGUMENT

It is the basic contention of the Department that where there is a binding agreement among unions which are parties to a jurisdictional dispute for the private determination of that dispute, the National Labor Relations Board may not proceed "to hear and determine the dispute" under Section 10(k) of the Act.

The pertinent Section of the Act provides:

10(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

The National Labor Relations Board has ruled that it is not empowered to hold a Section 10(k) hearing if the "parties to such dispute" have "agreed upon methods for the voluntary adjustment of the dispute." *Manhattan Construction Co.*, 96 NLRB 1045. In *A. W. Lee, Inc.*, 113 NLRB 947, the National Labor Relations Board made a similar ruling even though a union party to the dispute refused to abide by the National Joint Board's determination of the dispute. The Board's rationale was as follows:

In accordance with the foregoing, we find that before the charge herein was filed, the parties had agreed upon a method for the voluntary adjustment of the dispute here involved, and that the dispute had been determined within the framework of the agreed method. The fact that Lathers Local 9 has refused to abide by the determination, in derogation of its agreement, is, in our opinion, immaterial. As previously noted, the



proviso to Section 10(k) applies equally to adjustment or an agreement upon a method of adjustment. The Board has previously held that the refusal of a party to abide by a determination made pursuant to an agreed-upon method, does not nullify the agreement on a method for voluntary adjustment within the meaning of the proviso to Section 10(k). To hold otherwise would condone and sanction Lathers Local 9's breach of the agreement, and would tend to discourage and render worthless the making of such agreements, contrary to the statutory purpose to encourage the voluntary adjustment of jurisdictional disputes. Otherwise, any party adversely affected by determination made pursuant to the agreement could breach the agreement with impunity, and then have recourse to this Board for a redetermination of the dispute in the hope that the redetermination might be favorable. 113 NLRB 947, 953-4.

The Board restated this rationale as follows in the case of *Acoustical Contractors Association*, 119 NLRB 1345, 1353:

To construe the Act so that a party dissatisfied with the agreed method can have an alternative tribunal—this Board—either redetermine an adverse decision or pass upon the matter in advance of an expected adverse decision, is to frustrate the congressional purpose of placing initial reliance upon voluntary agreements to settle jurisdictional strife.

It is respectfully submitted that the reasons stated above in cases where the unions and the employer were bound by the Plan apply with equal force in cases where only the unions are bound.

Jurisdictional disputes are essentially quarrels between organizations of workmen over assignments of work tasks. It is their jurisdiction which is in issue. If their quarrels are resolved there is no jurisdictional dispute.

Agreements between unions are the principal method of bringing peace into this controversial area of industrial life. When the unions establish procedures for the decisions of



their jurisdictional quarrels, the goal of industrial peace is furthered. Such procedures should not be undermined if they are to achieve their salutary objectives.

The NLRB's refusal to defer to private settlement machinery unless the employer making the assignment is bound thereto defeats the policy of "offer[ing] strong inducements to quarrelling unions to settle their differences" and the fundamental policy of encouraging the "permanent resolution of disputes" (*NLRB v. Radio and Television Broadcast Engineers Local Union 1212*, 364 U.S. 573, 577).

The private machinery in this area, like other decisional institutions in our legal process, finds its greatest appeal in the stability it can afford. By establishing criteria for decisions, and determining cases within a uniform framework, the machinery enables unions to be able to predict the outcome of disputes and to order their objectives and programs accordingly. The results are a reduction of the number of work stoppages for such objectives, the resolution of disputes before they reach the level of formal determination, private or governmental, the permanent resolution of disputes following private determination, and greater industrial peace in general. All this is disrupted when the NLRB can override the private determination with a contrary determination of its own.

A union which knows, from prior decisions of the NLRB, that the Board will reject the private determination, when the employer is not bound, can, subsequent to an adverse determination by the private machinery, (1) refuse to comply with such determination and continue its work stoppage, hoping to have a contrary determination rendered by the NLRB or (2) prevail upon a friendly employer to continue an assignment which is contrary to such determination. In the second situation, the employer's non-commitment to the private machinery may have been preplanned to protect the union in the event of the anticipated adverse determination by the private machinery.

It may be noted that although there is a twenty year history of employer participation in the National Joint Board for the Construction Industry there is no guarantee that this condition will continue. If such participation ceases, procedures authorized by the Constitution of the Department (Article X) limited to unions may provide the only private machinery to deal with the numerous jurisdictional disputes in this industry. The effectiveness of any such machinery will be severely limited by the current policy of the NLRB in Section 10(k) hearings.

It is respectfully submitted that neither the statutory language nor the legislative history of the Act requires the interpretation of the National Labor Relations Board which is at issue in this case.

"The literal language of Section 10(k) does not require the employer to be a party to any agreed upon method of settlement. . . . Nowhere in the legislative history is there any indication that Congress sought to require employer participation in this agreed upon method of adjustment of the dispute. . . . [T]he legislative history makes no mention of employer participation in private settlements." Report of the Special Committee on the Building and Construction Industry, Section of Labor Relations Law—1965 Proceedings, American Bar Association, pp. 456-57. Rather, both the language and legislative history of Section 10(k) clearly reflect Congress' intention that "parties to such dispute" includes only the disputing unions.

With respect to the language of Section 10(k), the nearly identical phrase "parties to the dispute" is contained in the second sentence thereof involving dismissal of the Section 8(b)(4)(D) charge upon compliance with a NLRB Section 10(k) determination. Clearly, the second phrase means the same as the one at issue. And the phrase in the second sentence must refer only to the disputing unions. For if such phrase were construed to include the employer,

the Section 8 (b)(4)(D) charge could not be dismissed where the disputing unions were in compliance with the determination, but the employer insisted upon an assignment of work contrary thereto. Obviously, such an interpretation would render Section 10(k) meaningless.

Section 10(k)<sup>8</sup> of the Act had its genesis in the 80th Congress in a bill introduced by Senator Morse on March 10, 1947, S. 858 (Legislative History of the Labor Management Relations Act, 1947, Volume II (National Labor Relations Board, 1948), p. 985.<sup>9</sup>

Insofar as the language in issue and the entire provision concerning private settlement machinery is concerned, S. 858 was identical to Section 10(k) as enacted except for the phrase "or to appoint an arbitrator" which was deleted from the final version.<sup>10</sup> Mr. Morse was also a member of the Senate Committee on Labor and Public Welfare which reported S. 1126, the bill which formed the basis for the

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<sup>8</sup> "By the term 'parties' those legislators who discussed the matter indicated that Congress means the disputing unions themselves." ABA Special Committee Report. p. 456.

<sup>9</sup> Volumes I and II of this two volume set will hereinafter be referred to as "I and II Leg. Hist."

<sup>10</sup> S. 858 provided in pertinent part:

Sec. 6(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (2)(A) of section 8(b), the Board is empowered to hear and determine the dispute out of which such unfair labor practice shall have arisen or to appoint an arbitrator to hear and determine such dispute, unless, within 10 days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted or agreed upon methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the Board or the arbitrator appointed by the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

Labor-Management Relations Act of 1947.<sup>11</sup> Section 10(k) of S. 1126, as reported, was identical to the provision in S. 858. Senator Morse is, therefore, an authoritative source for the meaning and intent of Section 10(k) of the Act. In explaining the basis for the provision in S. 858, he stated (II Leg. Hist. 983):

.... I noticed, as a member of the War Labor Board during the war, that there was tremendous opposition to our exercising jurisdiction over certain types of work stoppages, such as the jurisdictional dispute, which we knew could not be justified on any basis by those participating in the dispute. I remember very clearly a night when we had a very serious stoppage of work in one of the vital war plants of the country because of a jurisdictional dispute. I then proposed that unless the workers went back to work at the next shift the Board should appoint an arbitrator whose decision should be final and binding. Labor vigorously opposed my position.

In that particular case the Board took a recess, and in 10 minutes one of the labor representatives came back and stated that the men had been ordered back to work by the union. That is the way they preferred it. That is the way I prefer it, too. But we could not take a chance. Therefore, I offered a resolution, which became the policy of the Board, with labor dissenting at the time it was adopted, which provided that for

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<sup>11</sup> S. 1126 was introduced by Senator Taft and was reported on April 17, 1947. After extensive debate in the Senate, the Senate, on May 13, 1947, passed H.R. 3020 (the bill introduced by Mr. Hartley and passed by the House on April 17, 1947) after substituting the language of S. 1126. H.R. 3020, as passed by the Senate, was sent to the Conference Committee and, as amended by the Committee, was approved by the House of Representatives and the Senate on June 4 and 6, 1947, respectively. The Conference Committee amended Section 10(k) to omit the authority of the NLRB to appoint an arbitrator but otherwise left intact the section as originally contained in S. 858 and as contained in H.R. 3020 as passed by the Senate. H.R. 3020 as passed by the House contained no counterpart to Section 10(k). See I Leg. Hist. VII-X (chronological statement), 505, 561.

the duration of the life of the War Labor Board we would give the union leaders involved in a jurisdictional dispute 24 hours to proceed to settle the dispute without a work stoppage, and upon their failure to do so we would appoint an arbitrator whose decision would be final and binding.

What I wish to stress is the remarkable compliance we obtained so far as the quick settlement of jurisdictional disputes was concerned, once the resolution became the policy and procedure of the Board.

I think it ought to be frankly stated here this afternoon that *probably one of the greatest benefits that will come from the adoption of such amendments to the Wagner Act as I am proposing this afternoon will be action on the part of the unions themselves to see to it that it does not become necessary, unless in exceptional cases, to resort to the machinery which I have proposed in those amendments.* I am not being fooled in regard to this question. The point I wish to emphasize is that I believe that declaring certain actions to be unfair labor practices will be preventive of some of the abuses which we seek to cure, because *the unions themselves will proceed to establish within their own organizations machinery capable of settling such disputes short of economic action.* If that will be the effect of the amendment, it certainly will be more than justified. (Emphasis added.)

But Senator Morse is not the only authoritative source for the point that "parties to such dispute" in Section 10(k) was intended to include only the disputing unions.

See also I Leg. Hist. 314-15 ("Jurisdictional strikes usually involve quarrels, not between employers and employees, but *between rival unions*, which use the strike weapon against each other, . . ." (Emphasis added)—House Report No. 245 on H.R. 3020); I Leg. Hist. 561 ("The Senate Amendment also contained a new section

10(k), which had no counterpart in the House bill. This section would empower and direct the Board to hear and determine *disputes between unions* giving rise to unfair labor practices under section 8(b)(4)(D) (jurisdictional strikes)" (Emphasis added)—House Conference Report No. 510, on H.R. 3020; I Leg. Hist. 583 ("A jurisdictional dispute is one growing out of a *dispute between two or more representatives of employees*. Innocent employers should not be penalized because unions force a strike to *settle difficulties between unions*." (Emphasis added)—Remarks of Rep. Gerald W. Landis, March 24, 1947; II Leg. Hist. 1157 ("Consequently, there have been numerous jurisdictional disputes in which the employer is absolutely innocent, and yet he and the public have been made to suffer, even though they have had absolutely nothing to do with the controversy or the causes of it. *Such controversies are simply battles between two unions* in an attempt to determine which one will gain the mastery in that field." (Emphasis added)—Remarks of Senator Smith, April 30, 1947.)

The NLRB's interpretation of the phrase "parties in dispute" in the first sentence of Section 10(k) is inconsistent with its own interpretation of the phrase in the same sentence.

The NLRB has held that where the disputing unions have, following the filing of a Section 8(b) (4) (D) charge by the employer making the work assignment, entered into an agreement resolving the merits of the dispute by awarding the work to respondent union and have complied with such resolution of the dispute, the Section 10(k) notice must be quashed notwithstanding the employer's objection to such resolution and his refusal to be bound to such agreement. *Local 1905, Carpet, Linoleum & Soft Tile Layers (Butcher & Sweeney Construction Co.)*, 143 NLRB 251

(1963), cited with approval in *NLRB v. Local 1291, ILA*, 368 F. 2d 107, 109 (3d Cir. 1966).<sup>12</sup>

It will be recalled that the first sentence of Section 10 (k) provides for a hearing "unless . . . the parties to such dispute . . . have adjusted, or agreed upon methods for the voluntary adjustment of the dispute." If the employer in *Butcher & Sweeney* were a "party" to the dispute, the notice of the Section 10(k) hearing should not have been quashed. The National Labor Relations Board ruled otherwise stating:

The Board has noted on previous occasions that implicit in the thrust of the Supreme Court's decision in the *CBS* case is the proposition that Sections 8(b)(4)(D) and 10(k) were limited to situations involving competing claims between *rival* groups of employees, and were not designed to require the Board to arbitrate a dispute between a union and an employer when no such competing claims are involved.

The meaning of the phrase "parties in dispute" should be the same whether the parties have "adjusted" or "agreed upon methods for the voluntary adjustment of the dispute." The *Butcher and Sweeney* rule which was applied to the case of an "adjustment" should also apply here where the rival unions were bound to private methods for the settlement of the dispute.

It is respectfully submitted for all the above reasons that the National Labor Relations Board did not act in accordance with law in failing to quash the notice of the Section 10(k) hearing in this case. Since the decision and order of

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<sup>12</sup> See also *Sheet Metal Workers Int'l Assn., Local Union No. 272 (Valley Sheet Metal Company)*, 136 NLRB 1402 (1962), also cited with approval by the Third Circuit in *NLRB v. Local 1291, ILA, supra*. There, the Board quashed the Section 10(k) notice on the ground that the "rival" locals, both affiliated with the Sheet Metal Workers International Union, agreed that the employer's work assignment was erroneous pursuant to the "two-man" rule contained in the International's constitution.



the Board in the Section 8(b)(4)(D) proceeding were predicated on the validity of its action under Section 10(k), the said order should be set aside and the Board's cross-petition for enforcement should be denied. See *NLRB v. Radio and Television Broadcast Engineers Union*, 364 U.S. 573, 586 (1961); *NLRB v. Int'l. Longshoremen's Warehousemen's Union*, 378 F. 2d 33, 35-36 (9th Cir. 1967); *NLRB v. Local 991, Int'l. Longshoremen's Assn.*, 332 F. 2d 66, 71 (5th Cir. 1964).

Respectfully submitted,

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SHERMAN AND DUNN  
September, 1969



## **PLAN FOR NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES**

In consideration of the mutual promises and covenants herein contained, it is agreed by and between the parties hereto as follows:

### **ARTICLE I**

**Sec. 1. *Effective Date.***—This agreement, as amended, shall take effect on April 1, 1965, and shall remain in force and effect until March 31, 1966, and shall continue in effect for each year thereafter unless terminated as provided for herein. Changes or amendments to this agreement may be made as provided for herein.

**Sec. 2.** Any party signatory to this agreement desiring to change or terminate this agreement shall notify the other party in writing at least ninety (90) days prior to the 31st day of March of any year subsequent to 1965. When notice for change is given, the nature of the changes desired must be specified in the notice. This agreement shall be subject to change at any time by mutual consent of the parties hereto. Any changes agreed upon shall be reduced to writing and signed by the parties hereto, the same as this agreement.

### **ARTICLE II**

**Sec. 1. *Joint Board.***—There shall be established a National Joint Board for the Settlement of Jurisdictional Disputes in the building and construction industry.

This Board shall consist of an impartial chairman, two regular and two alternate Labor Members appointed by the Executive Council of the Department. One of each shall be appointed from among the basic trades and one of each shall be appointed from among the specialty trades, and two regular and two alternate employer members, one of each

shall be representatives of and selected by the participating national association of general contractors of the industry and one of each representing and selected by the participating national associations of specialty contractors in the construction industry.

It is understood such employer representatives shall consist solely of contractor members, officers of member contracting firms or qualified association staff members who have had experience and are actively engaged in the building and construction industry.

No regular or alternate member of the Joint Board shall participate in any case where the trade union or company of which he is an officer or representative is a party to the dispute. In the event that both a regular member and his alternate are disqualified from participation in a case by reason of the limitation expressed in the preceding sentence, the executive head or other designated representative of the department or the particular association group party to this Plan shall designate an appropriate substitute member from the eligible group to participate in the decision of the case.

The full-time officers of the Department shall be available for advice and consultation but they shall not be eligible for appointment to the Joint Board.

There shall be no proxy votes.

The Labor Members of the Board shall hold office for one (1) year and shall be appointed by the Executive Council annually at the first quarterly meeting of each year.

The joint negotiating committees representing the Building and Construction Trades Department and The Associated General Contractors of America, Inc., and the National Participating Specialty Contractors' Associations shall have the duty of selecting the Chairman of the National Joint Board and

the Impartial Umpire of the hearings panel and Appeals Board.

The Chairman of the National Joint Board shall be bonded and made responsible for disbursement of the Board's funds, shall keep the books of the Board and submit to the parties to the agreement a quarterly financial statement; shall provide for an annual audit of the books by a certified public accountant and shall prepare annually a proposed budget of the necessary expenses of the Board for the following twelve (12) months and submit same to the joint negotiating committee for approval. The total amount of the budget, when approved, shall be subscribed annually in advance 50 per cent by the Building and Construction Trades Department, AFL-CIO, and 50 per cent by the participating national associations of employers signatory to this agreement. All expenditures shall be within the approved budget.

In negotiating national agreements between international unions, consultation with the appropriate management groups on the making of agreements between international unions is desirable and should be carried on.

National agreements entered into and properly signed by disputing international unions, other than those provided for in Article III, Section 2, shall be filed with the National Joint Board and attested by the Chairman.

**Joint Board Rules and Regulations**—The Chairman and Joint Board shall have the authority to establish such procedural regulations and administrative practices as may be required for the effective administration of this agreement, with the approval of the Joint Negotiating Committee, provided such regulations and practices are consistent with the expressed terms of this agreement.

The Joint Negotiating Committee shall have the

power to revise the procedural regulations and administrative practices of the Joint Board.

**Sec. 2. Appeals Board.**—There shall also be established an Appeals Board consisting of an Impartial Umpire appointed by the Joint Negotiating Committee, two regular and two alternate labor members appointed by the Executive Council of the Department from the General Presidents of the national and international unions affiliated with the Department, or elected general officers of national or international unions designated by their respective General Presidents, and one regular and one alternate employer member appointed by each of the two participating national employer association groups. It is understood such employer representatives shall consist solely of contractor members, or officers of member contracting firms, who have had experience, and are actively engaged, in the building and construction industry. The Executive Council shall select one regular and one alternate Labor Member from the basic trades and one regular and one alternate Labor Member from the specialty trades. No regular or alternate member of the Appeals Board shall participate in any appeal where the trade union or company of which he is an officer or representative is a party to the dispute. In the event that both a regular member and his alternate are disqualified from participation in an appeal by reason of the limitation expressed in the preceding sentence, the executive head or other designated representative of the Department or the particular Association group party to this Plan shall designate an appropriate substitute member from the eligible group to participate in the decision of the appeal.

The Members of the Appeals Board shall hold office for one (1) year and shall be appointed by the designated appointing agency annually except

that where a vacancy occurs during an unexpired term of office the appointing power can be exercised at the time such vacancy occurs.

The commitments of the Department and the national participating employers association groups with respect to the subscription of funds of the National Joint Board shall also apply equally to the Appeals Board. The expenses of the Appeals Board shall be limited to actual expenses and per diem allowances of the Impartial Umpire which shall be disbursed from the budgeted funds of the National Joint Board.

Sec. 3. It is understood that in signing this agreement the parties agree to bear their appropriate share of the Joint Board's expense and to furnish their representatives on the Joint Board and Hearings Panels hereinafter provided for in this agreement.

Sec. 4. It shall be the duty of the Joint Board to consider and decide cases of jurisdictional disputes in the building and construction industry, which disputes are referred to it by any of the International Unions involved in the dispute, or an employer directly affected by the dispute on the work in which he is engaged or by a participating organization representing such employer.

Sec. 5. The Appeals Board is empowered to review and decide any appeal from a decision or ruling of the National Joint Board or a Local Board recognized under Article IV and such decision of the Appeals Board shall be final. The jurisdiction of the Appeals Board shall be discretionary and it is authorized, subject to the approval of the Joint Negotiating Committee, to prescribe rules as to the types of cases which it will accept for review. No decision of the Appeals Board shall be considered as part of the record referred to in Article III, Sec. 1(d) of this Plan. The Appeals Board shall have

the authority, subject to the approval of the Joint Negotiating Committee, to establish such procedural regulations as may be required for the effective administration of this appeals procedure. A quorum of the Appeals Board shall require four regular or alternate members (one each from the basic trades, the specialty trades, and the two participating national employer association groups). In the event of a tie vote, the Impartial Umpire shall cast the deciding vote.

The Appeals Board may, on its own motion, assume jurisdiction over any case at any stage of the proceedings, except a case before the Hearings Panel, either before or after the issuance of a decision, ruling or interpretation of the National Joint Board or of any of the recognized local boards.

### ARTICLE III

Sec. 1. (a) In making a job decision the Joint Board shall utilize the following criteria: Decisions and agreements of record as set forth in the Green Book, valid agreements between affected International Unions attested by the Chairman of the Joint Board, established trade practice and prevailing practice in the locality.

(b) The Joint Board may at its discretion hold oral hearings on repetitive disputes for the purpose of rendering a decision applying in the locality as defined by the Board.

(c) All agreements and decisions recognized under the provisions of the Constitution of the Building and Construction Trades Department shall be considered as constituting the record.

(d) Any job decision or ruling rendered by the Joint Board under paragraph (b) of this section may be appealed to a Hearings Panel by any of the participating National or International Unions involved or may be referred to a Hearings Panel for

a national decision by action of the Joint Board. Any decision rendered by such a Hearings Panel shall immediately become part of the record referred to in paragraph (c) of this section.

(e) In jurisdictional dispute cases where International Unions, members of the Building and Construction Trades Department, AFL-CIO, and participating or stipulated employer national associations, do not have direct representation on the Board hearing a specific case, they may designate a representative to participate in the discussion of such case.

(f) The Joint Board should not ignore the interests of the consumer in settling jurisdictional disputes, but should give due regard to such factors as efficiency and economy of operation.

**Sec. 2. Hearings Panels-National Decisions.—**When a dispute is filed with the Appeals Board by a National or an International Union, with a specific request for a decision on a national basis which would become part of the record, the Board shall review the request, and if the Board finds it is an issue not already determined on a national basis by a decision or agreement of record, it shall refer the issue to the Impartial Umpire who shall call a conference of the General Presidents of the Unions involved for the purpose of determining whether or not a national agreement is possible. If an agreement is concluded and properly signed by the contesting parties and attested by the Impartial Umpire, the terms and provisions of the agreement shall remain in effect as per the provisions of the Constitution of the Department. In the event that the dispute cannot be settled by agreement or is not settled by agreement at the end of six months, the Impartial Umpire shall docket the case for hearing and decision by a hearings panel as provided below.

**Sec. 3.** In any case to go to a hearings panel, the Impartial Umpire shall notify all General Presidents of National and International Unions affiliated with the Building and Construction Trades Department and national participating employers' association, stating the controversy to be considered and shall allow all parties interested to intervene. Thirty days' notice shall be given of the date set for the hearing. Briefs shall be submitted and exchanged by all parties to the dispute at least ten days prior to the hearing date.

**Sec. 4.** A hearings panel shall be composed of two disinterested General Presidents appointed by the Executive Council of the Department and two disinterested contractor representatives, one appointed by The Associated General Contractors of America, Inc., and one appointed by the national participating specialty contractor associations, together with the Impartial Umpire.

**Sec. 5.** The Joint Board may at its discretion and after conference between contesting unions, held by the Chairman of the Joint Board, refer a repetitive dispute which it finds not to be governed by a decision or agreement of record to the Impartial Umpire for mediation and the establishment of a hearings panel and a national decision.

**Sec. 6.** In the event any party to a dispute fails to present their case within the stated time, the Joint Board, the Appeals Board, and Hearings Panels shall, nevertheless proceed with the case and make its decision on the basis of the evidence presented.

**Sec. 7. Making Decisions.**—The Hearings Panel shall in every instance consider all pertinent evidence and shall render a decision if possible, within ten (10) days after the conclusion of the hearings. Copies of the Hearings Panel decision shall be sent



to all parties signatory to this agreement.

Decisions of the Hearings Panel are not appealable to the Appeals Board and shall be immediately accepted and complied with by all parties to this Agreement. Any decision or interpretation by the Joint Board shall be immediately accepted and complied with by all parties subject to this Agreement unless an appeal is taken to the Appeals Board. In such event, the decision or interpretation of the Appeals Board shall be immediately accepted and complied with by all parties to this Agreement, when such decision or interpretation has been rendered.

It is understood only those contractors who employ members of the organizations affiliated with the Building and Construction Trades Department of the AFL-CIO shall be considered as bound by this agreement when they have signed a stipulation setting forth that they are willing to subscribe to and be bound by the terms and provisions of this agreement.

#### ARTICLE IV

Sec. 1. *Local Settlements.*—In any community or locality where a plan for the settlement of jurisdictional disputes which has been recognized by the Building and Construction Trades Department now exists, it shall be used in the first instance to bring about an agreement or settlement or decision. However, any such local settlement or agreement or decision shall only apply to the particular job in question, and an appeal therefrom may be taken directly to the Appeals Board by any of the parties involved.

#### ARTICLE V

Sec. 1. *Continuance of Work.*—Pending a decision by the Board or such settlement as may be

arrived at through the office of the Chairman of the Joint Board, there shall be no stoppage of work rising out of any jurisdictional disputa.

Contractors and subcontractors shall make work assignments in accordance with the Contractor's Responsibility as set forth in the Procedural Rules of the National Joint Board. Members of organizations affiliated with the Building and Construction Trades Department shall continue to work on the basis of their original assignment.

## ARTICLE VI

Sec. 1. It is the sense of the parties hereto that the members and Chairman of the Joint Board shall tender to the National Labor Relations Board their services as expert witnesses in any hearing held by the Board under the provisions of Section 10 (k) of the National Labor Relations Act as amended, and that no fees shall be charged for such service beyond the statutory witness fees and mileage allowance.

Signed for the Building and Construction Trades Department, AFL-CIO:

FRANK BONADIO,  
*Secretary-Treasurer.*

CORNELIUS J. HAGGERTY,  
*President.*

Signed for the Participating Specialty Contractors Employers' Associations:

EDWARD S. TORRENCE.

LEON B. KROMER.

Signed for The Associated General Contractors of America.

WILLIAM E. DUNN,  
*Executive Director.*

W. RAY ROGERS,  
*President.*

Signed at the WHITE HOUSE Feb. 2, 1965

Witnessed by

LYNDON B. JOHNSON, PRESIDENT

**JURISDICTIONAL AGREEMENTS ENTERED  
INTO BETWEEN AFFILIATED INTERNA-  
TIONAL UNIONS AND DECISIONS REN-  
DERED AFFECTING THE BUILDING IN-  
DUSTRY THAT ARE HELD TO BE OPERA-  
TIVE BY THE BUILDING AND CONSTRU-  
CTION TRADES DEPARTMENT**

**By the**

**American Federation of Labor, Building and  
Construction Trades Department, A. F. of L.,  
National Board for Jurisdictional Awards**

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**Carpenters and Painters**

For the purpose of bringing about conditions of harmony and co-operation, the following agreement has this day been entered into and agreed to by and between the Brotherhood of Painters, Decorators and Paperhangers of America and the United Brotherhood of Carpenters and Joiners of America:

(1) It is agreed that the members of the United Brotherhood of Carpenters and Joiners of America shall erect and install all work in connection with, and required for, acoustical purposes up to the point of applying canvas, muslin or similar materials to take the finished decorations, which work shall be done by the members of the Brotherhood of Painters, Decorators and Paperhangers of America.

(2) The applying and erection of all mouldings, in connection with acoustical work, shall be done by members of the United Brotherhood of Carpenters and Joiners of America.

(3) If any misunderstanding arises as to the meaning or carrying out of any of the provisions contained herein, the same shall be taken up with the General Presidents of the two organizations parties hereto.

(4) This agreement to be in force and effect when approved by the Executive Board of the two organizations signatory hereto.

For the United Brotherhood of Carpenters and Joiners of America:

GEO. H. LAKEY.  
J. W. WILLIAMS.  
W. T. ALLEN.

For the Brotherhood of Painters, Decorators and Paperhangers of America:

JOS. F. KELLEY.  
CHARLES A. CULLEN.  
CLARENCE E. SWICK.

Dated December 17, 1928.

Witness:

WM. J. MCSORLEY,  
*President, Building Trades Department.*

#### **Lathers and Sheet Metal Workers**

Agreement between the Wood, Wire and Metal Lathers' International Union and the Sheet Metal Workers' International Association to govern the installation of products manufactured by the Knapp Brothers' Manufacturing Company, of Chicago, Ill., and similar products.

In order to simplify any differences that may arise on building operations, it is agreed by both

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parties to this agreement that the following products are conceded by the Wood, Wire and Metal Lathers' International Union as the work of the members of the Sheet Metal Workers' International Association:

Sanitary Metal Cove Base, No. 202.  
Sanitary Metal Cove Base, No. 203.  
Sanitary Metal Cove Base, No. 204.  
Sanitary Metal Cove Base, No. 205.  
Sanitary Metal Cove Base, No. 501.  
Sanitary Metal Window Stool and Frame,  
No. 302.  
Sanitary Metal Window Stool, No. 304.  
Sanitary Metal Chalk Trough, No. 303.

It is conceded by the Sheet Metal Workers' International Association that the following products are the work of the members of the Wood, Wire and Metal Lathers' International Union:

Knapp Metal Base Grounds and Screeds,  
styles Nos. 1, 1½, 2, 42, 49.  
Knapp Metal Casing Beads, Nos. 39 and 41.  
Eclipse Metal Picture Mould, No. 23.  
"Royal" Metal Picture Mould, No. 20.  
Knapp Sanitary Metal Chair Rail, No. 300.  
Metal Bull Nose Beads and Metal Corner  
Beads of every description.  
Inside and Outside Corner Fittings.

This agreement made and entered into January  
12, 1926.

WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION.

JOHN H. BELL, *Gen. Pres.*

WM. J. MCSORLEY, *1st Gen. Vice Pres.*

A. D. YODER, *Gen. Sec.-Treas.*

**SHEET METAL WORKERS' INTERNATIONAL  
ASSOCIATION.**

**JOHN J. HYNES, *Gen. Pres.***

**WM. L. SULLIVAN, *Gen. Sec.-Treas.***

**ROBERT BYRON, *Int. Rep.***

**EXPLANATION**

**Sanitary Metal Cove Base, No. 202:**

Used at intersections of floors and walls or partitions and comes 4 in. and 6 in. high. This base is erected before plastering and is so set as to form a ground screed for plastering and for the finished cement floor.

**Sanitary Metal Cove Base, No. 203:**

Used at intersections of floors and walls or partitions and comes in widths of 4 in. and 6 in. This is a flush base placed after floors and plastering is completed.

**Sanitary Metal Cove Base, No. 204:**

Is similar to No. 203 except that it comes in two sections where No. 203 comes in but one section.

**Sanitary Metal Cove Base, No. 205:**

Is similar to No. 204 except that the base is put in place before plastering and the top portion of it forms a ground for plastering. It comes 4 in. and 6 in. wide.

**Sanitary Metal Cove Base, No. 501:**

Is similar to No. 202 with the exception of a very little change in its form.

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**Sanitary Metal Window Stool and Frame, Nos. 302 and 304:**

Is a metal jamb running from 4 in. to 6 in. in width and a return on wall which forms a plaster ground.

**Sanitary Metal Chalk Trough, No. 303:**

As its name implies, is a chalk trough to go under blackboards in schoolhouses and is placed after plastering is completed.

It will hardly be necessary for me to explain that portion of the work which the Sheet Metal Workers concede to come under our jurisdiction, as you must be familiar with the names of the different materials mentioned in the agreement.

**Painters and Plasterers**

**New York, N. Y., February 16, 1928.**

This agreement entered into by and between the Operative Plasterers and Cement Finishers' International Association and the Brotherhood of Painters, Decorators and Paperhangers of America, in the matter of jurisdiction to govern the application of California Stucco "CRAFTEX," "TEXTONE" and other materials of like character, shall be as follows:

This agreement shall become effective February 16, 1928, that the applying of all California Stucco shall be the work of the Plasterers' organization. That the finishing of the same it is agreed that the Plasterers shall be permitted to apply one wash and

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thereafter all washing and the applying of colors shall be under the jurisdiction of the Brotherhood of Painters.

It is hereby agreed that all "CRAFTEX," "TEXTONE" or other material of the same character, when applied over a scratch or brown coat of plaster, shall be the work of the Plasterer, said material to be applied with a trowel, or other usual methods of plastering.

It is hereby agreed that all "CRAFTEX," "TEXTONE" or other material of like character, when applied over a sand finish or white coat of plaster, shall be the work of the Painter, said material to be applied with a brush, or other usual method of painting.

It is agreed that when the material in question is applied to show windows for decorative purposes, and does not exceed 150 yards in all, it shall be the work of the Painter, and when the work exceeds 150 yards and applied over a scratch or brown coat of plaster, it shall be the work of the Plasterer.

For Plasterers:

EDW. J. MCGIVERN.

T. A. SCULLY.

For Painters:

JOB. F. KELLEY, 3d G. V. P.

CHAS. A. CULLEN, 3d G. V. P.

Attest:

WM. J. MCSOLEY,

*Pres., Building Trades Department.*

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### **Carpenters and Lathers**

Agreement entered into between the representatives of the United Brotherhood of Carpenters and Joiners and Wood, Wire and Metal Lathers' International Union, January 14, 1908.

Pending the action of their convention, the United Brotherhood of Carpenters and Joiners of America agree not to assert jurisdiction over any iron work including iron or wire lathing, studding, or any other exclusively iron work claimed by the Wood, Wire and Metal Lathers' International Union.

The Wood, Wire and Metal Lathers' International Union agree that we will not assert jurisdiction over or allow our members to perform any wood work, including shingling, wooden arches, door or window frames, wooden studding or furring, or any other carpenter or wood work, except wooden lath to receive plastic material.

Signed for the United Brotherhood of Carpenters and Joiners of America:

WM. D. HUBER, *President.*

FRANK DUFFY, *General Secretary.*

Signed for the Wood, Wire and Metal Lathers' International Union:

CHAS. LANGLANDS,

JOHN STEVENS, *Committee.*

**Carpenters and Lathers**

August 21, 1923.

**RELATIVE TO JURISDICTION OVER MATERIAL KNOWN  
AS CELOTEX**

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Further taking up the question of jurisdiction over the material known as "CELOTEX," and in accordance with the tentative proposals on this subject between our organizations, we, the undersigned, hereby agree that the material known as Celotex Lath comes under the jurisdiction of the Lathers' International Union; all other Celotex material comes under the jurisdiction of the United Brotherhood of Carpenters and Joiners.

**UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA.**

**WM. L. HUTCHESON, *Gen. Pres.***  
**FRANK DUFFY, *Gen. Sec.***

**WOOD, WIRE AND METAL LATHERS'  
INTERNATIONAL UNION.**

**JOHN H. BELL, *Gen. Pres.***  
**A. D. YODER, *Sec.-Treas.***

**Boiler Makers and Iron Workers**

**APPROVED MAY 28, 1926**

It is agreed that the following work shall be recognized as coming under the jurisdiction of the International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America:

**SECTION 1.** The construction, erection and assembling of all boilers, parts and work in connection therewith, including boiler fronts, heat units, water walls, tube supports and casings (except the unloading, hoisting, or lowering and placing of complete boilers, steam drums and assembled sections of water tube boilers to their approximate positions), all connections between the boiler and stack

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(commonly known as breeching), built of sheet steel or iron, supports for the same (which are not part of the building structure), uptakes, smoke boxes, air and water heaters, smoke consumers, hot or cold air ducts (except when used for ventilating purposes).

**SEC. 2. Iron and steel ship building.**

**SEC. 3.** Pontoons, purifying boxes, gas generators and wash tanks or scrubbers, standpipes, brewery vats (except glass enameled tanks), water tower (except structural frames and balconies), all iron and steel pipe line, penstock and flume work, steam, air, gas, oil, water, or other liquid tanks or containers requiring tight joint, including tanks of riveted, caulked or welded construction in connection with swimming pools.

**SEC. 4.** The following work in and around blast furnaces and rolling mills, viz.: hot stoves, blast furnaces, cupolas and dump cars, and all steam, air, water, gas, oil or other liquid tight work (all other iron and steel work in such buildings shall be done by Iron Workers).

**SEC. 5.** Gasometers, including all frame work in connection with same.

**SEC. 6.** All iron or steel stacks, in connection with power plants, furnaces, rolling mills, manufacturing plants, and all other power plants (except small power plants in connection with hotels or office buildings and sectional or other steel stacks erected in office buildings or hotels), and all extensions or repairs of such stacks shall be done by Boiler Makers.

It is agreed that the following work shall be recognized as coming under the jurisdiction of the International Association of Bridge, Structural and Ornamental Iron Workers:

SECTION 1. The erection and construction of all iron, steel and ornamental iron entering into the erection and construction of the following: Buildings, bridges, viaducts, subways and tunnels, towers, hoists, car dumpers, cranes, coal conveyors, ore unloaders, stokers, supports for boilers, coal bins and hoppers, ash chutes and hoppers, rock, coke, sand and ore bins and hoppers, kilns, driers, coolers, crushers, mixers, pulverizers, roasters, all caisson work, safe deposit boxes, vaults, vestibules and doors, glass enameled tanks, malt drums, fans, and hot rooms and ventilators including air ducts in connection therewith, all swimming pools (except as specified in Section 3 of the Boiler Makers' classification of work in this agreement) and the wrecking of all the above work shall be done by Iron Workers.

SEC. 2. The erection and construction of all sectional and other steel or iron stacks, erected in office buildings and hotels; and all stacks erected in small power plants in connection with hotels and office buildings, and the extension and repair to such stacks shall be the work of the Iron Workers.

SEC. 3. The erection and construction of structural iron work and balconies in connection with water towers shall be the work of the Iron Workers.

SEC. 4. The erection and construction of all steel and iron work around rolling mills and blast furnaces (except that specified in Section 4 of the

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Boiler Makers' classification of work) shall be done by Iron Workers.

SEC. 5. The unloading, hoisting or lowering and placing of complete boilers, steam drums, and assembled sections of water tube boilers to their approximate positions shall be done by Iron Workers.

SEC. 6. The burning and welding on work awarded to the Boiler Makers shall be done by Boiler Makers, and the burning and welding on work awarded to the Iron Workers shall be done by Iron Workers.

SEC. 7. Any further disputes that may arise between the parties of this agreement shall be first considered by the respective General Presidents. Upon their failure to agree, the question shall be submitted to arbitration. None of the work definitely decided upon in this agreement shall be subject to further arbitration.

For the International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America:

(Signed) J. A. FRANKLIN.  
WM. ATKINSON.  
JOS. P. RYAN.  
MARTIN DALEY.

For the International Association of Bridge, Structural and Ornamental Iron Workers:

(Signed) P. J. MORRIN.  
W. J. MCCAIN.  
DAN J. O'SHEA.  
MICHAEL C. ARTEY.

It is agreed that the following work shall be recognized as coming under the jurisdiction of the International Association of Bridge, Structural and Ornamental Iron Workers:

**SECTION 1.** The erection and construction of all iron, steel and ornamental iron entering into the erection and construction of the following: Buildings, bridges, viaducts, subways and tunnels, towers, hoists, car dumpers, cranes, coal conveyors, ore unloaders, stokers, supports for boilers, coal bins and hoppers, ash chutes and hoppers, rock, coke, sand and ore bins and hoppers, kilns, driers, coolers, crushers, mixers, pulverizers, roasters, all caisson work, safe deposit boxes, vaults, vestibules and doors, glass enameled tanks, malt drums, fans, and hot rooms and ventilators including air ducts in connection therewith, all swimming pools (except as specified in Section 3 of the Boiler Makers' classification of work in this agreement) and the wrecking of all the above work shall be done by Iron Workers.

**SEC. 2.** The erection and construction of all sectional and other steel or iron stacks, erected in office buildings and hotels; and all stacks erected in small power plants in connection with hotels and office buildings, and the extension and repair to such stacks shall be the work of the Iron Workers.

**SEC. 3.** The erection and construction of structural iron work and balconies in connection with water towers shall be the work of the Iron Workers.

**SEC. 4.** The erection and construction of all steel and iron work around rolling mills and blast furnaces (except that specified in Section 4 of the

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Boiler Makers' classification of work) shall be done by Iron Workers.

SEC. 5. The unloading, hoisting or lowering and placing of complete boilers, steam drums, and assembled sections of water tube boilers to their approximate positions shall be done by Iron Workers.

SEC. 6. The burning and welding on work awarded to the Boiler Makers shall be done by Boiler Makers, and the burning and welding on work awarded to the Iron Workers shall be done by Iron Workers.

SEC. 7. Any further disputes that may arise between the parties of this agreement shall be first considered by the respective General Presidents. Upon their failure to agree, the question shall be submitted to arbitration. None of the work definitely decided upon in this agreement shall be subject to further arbitration.

For the International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America:

(Signed) J. A. FRANKLIN.  
WM. ATKINSON.  
JOS. P. RYAN.  
MARTIN DALRY.

For the International Association of Bridge, Structural and Ornamental Iron Workers:

(Signed) P. J. MOERIN.  
W. J. MCCAIN.  
DAN J. O'SHEA.  
MICHAEL C. ARTERY.

**Sheet Metal Workers and Boiler Makers**

Mr. John J. Hynes, *General President*,  
642 Transportation Building,  
Washington, D. C.

Dear Sir and Brother:

The International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America, through the undersigned duly authorized officers, hereby officially recognize and acknowledge the established jurisdictional rights of the members of the Sheet Metal Workers' International Association to manufacture, assemble, erect and install all sheet metal work of No. 10 gauge or lighter when used in connection with the construction, equipment, alteration and repair of buildings.

In witness thereof we hereby affix our hand and seal this 16th day of October, 1930.

For the International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America:

(Signed) J. A. FRANKLIN,  
*International President.*

For the Sheet Metal Workers' International Association:

(Signed) JOHN J. HYNES,  
*General President.*

**Iron Workers and Elevator Constructors**

June 9, 1931.

The undersigned representatives of the International Association of Bridge, Structural and Ornamental Iron Workers, and the International Union of Elevator Constructors, Operators and

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Starters mutually agree that both organizations shall co-operate with and support each other to maintain Union conditions and their members upon the work of their respective trades, and that for the purpose of establishing complete harmony between both organizations, this agreement is hereby entered into, effective on and from this date.

All semi or full automatic elevator doors or gates, and all operating devices shall be the work of the Elevator Constructors.

All elevator doors or gates manually operated, including all elevator enclosures, fronts, facias, sills, frames and bucks, shall be the work of the Iron Workers.

Steel trusses, girders and supports for escalators, where riveted or welded, shall be the work of the Iron Workers.

All other escalator work shall be the work of the Elevator Constructors.

All theater curtains, back-stage lifts, and equipment in connection therewith, shall be assembled and erected by the Iron Workers, excepting the operating machinery.

Orchestra and Console lifts shall be assembled and erected by the Elevator Constructors, including the machinery in connection therewith, and all machinery in connection with theater curtains and back-stage lifts.

(The above two paragraphs shall also apply to auditoriums, schools, convention halls, and other buildings similarly equipped.)

All of the above is hereby agreed to and accepted by the signatories to this agreement for their respective organizations.

For the International Association of Bridge,  
Structural and Ornamental Iron Workers:

(Signed) P. J. MORRIN,  
*General President.*  
WM. H. POPE,  
*5th Gen. Vice-Pres.*  
JOHN M. SCHILLING,  
*7th Gen. Vice-Pres.*  
W. J. MCCAIN,  
*General Secretary.*

For the International Union of Elevator Con-  
structors, Operators and Starters:

(Signed) FRANK FEENEY,  
*International President.*  
J. C. MACDONALD,  
*1st Int. Vice-Pres.*  
WALTER SNOW,  
*2d Int. Vice-Pres.*  
JOSEPH F. MURPHY,  
*Int. Sec.-Treas.*

International Union of Operating Engineers and  
United Association of Journeymen  
Plumbers and Steam Fitters

#### AGREEMENT

In the controversy between the United Association of Plumbers and Steam Fitters and the International Union of Steam and Operating Engineers in Cleveland, Ohio, over an air compressor that was used by the Plumbers for boring holes in a concrete floor, and which was referred by the local unions of Cleveland and the International representatives of both organizations to the International Presidents of the United Association of Plumbers and

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Steam Fitters and the International Union of Steam and Operating Engineers for adjustment, we find that at the A. F. of L. Convention held in Norfolk, Va., in 1907, Resolution No. 124, which was presented by the International Union of Steam and Operating Engineers and adopted by the Convention, gives jurisdiction over this work to the International Union of Steam and Operating Engineers.

We also find in the jurisdiction claims filed by the International Union of Steam and Operating Engineers with the Building Trades Department upon their entrance into the Department, that this work is covered in their jurisdiction by the following paragraph:

#### **"HOISTING AND PORTABLE"**

"All hoisting and portable engines on building and construction work, where operated by steam, electricity, gasoline, hydraulic or compressed air, including pumps, siphons, pulsometers, concrete mixers, air compressors and elevators, where used for hoisting building material, street rollers, steam shovels, dinky locomotives, cableway, clam shells and pile drivers."

Both International Presidents met in Washington on January 5, 1925, at the headquarters of the Building Trades Department, and upon finding the action of the A. F. of L. Convention upon Resolution No. 124 and the jurisdiction filed with the Building Trades Department that this work of operating air compressors belongs to the Hoisting and Portable Engineers, it is agreed that the local unions will be notified to that effect.

(Signed) JOHN COEFIELD,

(Signed) ARTHUR M. HUDNELL.

**Sheet Metal Workers' International Association  
and United Association of Journeymen  
Plumbers and Steam Fitters**

**AGREEMENT**

**INDIANAPOLIS, IND.  
January 28, 1928.**

Report of the Committees appointed by the United Association of Journeymen Plumbers and Steam Fitters and the Sheet Metal Workers' International Association, to take up the matter of sheet lead in building construction.

This Committee met at Hotel Severin, Indianapolis, Ind., Friday, January 27, 1928, with the following representatives in attendance: Wm. Lynn, George Masterton and Bert Stephenson, representing the United Association of Plumbers and Steam Fitters, and James Lennon, Richard Pattison and James T. Moriarty, representing the Sheet Metal Workers International Association.

The Committee organized with Wm. Lynn, Chairman; James T. Moriarty, Secretary. The Committee was visited by Robert Fox, Local Agent of the Plumbers, and Charles Wilson, Local Agent of the Sheet Metal Workers. After hearing both agents, the Committee went into executive session and after holding several meetings, reached the following agreement:

"Sheet lead work used in roofing, gutters, valleys, flashings in connection with roofing, and ducts in direct connection with ventilation systems shall be the work of the Sheet Metal Workers, members of the Sheet Metal Workers' International Association. All other sheet lead work

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including roof flashings in connection with plumbing, shall be the work of the Plumbers, members of the United Association of Journeymen Plumbers and Steam Fitters."

We, the undersigned committee, recommend that this agreement shall go into effect when approved and signed by the International Presidents of the above organizations.

(Signed) WM. LYNN,

(Signed) GEORGE MASTERTON,

(Signed) BERT STEPHENSON,

*Representing United Association of Journey-  
men Plumbers and Steam Fitters.*

(Signed) JOHN CORFIELD,

*General President.*

(Signed) JAMES LENNON,

(Signed) R. PATTISON,

(Signed) JAMES T. MORIARTY,

*Representing Sheet Metal Workers' Inter-  
national Association.*

(Signed) JOHN J. HYNES,

*General President.*

**Bricklayers, Masons and Plasterers' International  
Union and Operative Plasterers and Cement  
Finishers' International Association**

AGREEMENT entered into between the B., M.  
& P. I. U. of America and the O. P. & C. F. I. A.,  
at the Headquarters of First-Named Organiza-  
tion, Odd Fellows Bldg., Indianapolis, Ind.

FEBRUARY 17, 1911.

First. The O. P. & C. F. I. A. agrees to a  
mutual interchange of cards with the B., M. & P. I.  
U., same to cover all cities where the O. P. & C. F.

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I. A. has locals and the B., M. & P. I. U. has mixed locals, and that the following stipulations be recognized.

Second. The support to be given in the interest of either organization in the localities where the B., M. & P. I. U. controls shall be determined by the Executive Boards of both organizations in conference when the necessity for such support arises. No work to be performed until the conference board comes to a decision.

Third. The B., M. & P. I. U. recognizes and concedes the sole right of the O. P. & C. F. I. A. to organize and charter unions composed of exclusive plasterers in all localities where a sufficient number of bona fide resident plasterers can be secured, and guarantees that no interference on their part shall take place, except under conditions hereafter stated, and that no exclusive plasterers' union shall be chartered by the B., M. & P. I. U. under any circumstance.

Fourth. The conditions existing under which an exclusive union of plasterers is permitted to be organized in territory already controlled by the B., M. & P. I. U. having been a matter of complaint at the conference, the representatives of the B., M. & P. I. U. have determined that the grounds upon which the complaint is based are justified and that same demand a concession upon their part—i. e., that of permitting the bricklayers and stonemasons of a mixed union the right to cast a vote upon the question of the plasterer members being allowed to form a separate union. Said representatives agree to eliminate the bricklayer and stonemason when such votes are being taken in the future, and that only the recognized plasterer members of the union shall be allowed to cast a vote upon such proposi-

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tions. That in all cases where two-thirds of such plasterer members vote in favor of separation, the General Secretaries of the O. P. & C. F. I. A. and the B., M. & P. I. U. shall be notified of same by the secretary of the union, and a charter shall be immediately granted.

Fifth. The B., M. & P. I. U. agrees that the sub-contracting of the plastering contract of a bona fide employer or general contracting firm shall not be objected to by any of its subordinate unions upon all general contracts exceeding \$50,000, pending the convening of the next biennial convention of the B., M. & P. I. U., at which convention legislation will be asked for that will make permanent the relief ordered at this time.

Sixth. That the O. P. & C. F. I. A. charters be withdrawn from Springfield, Newark, and Rochester, and the members of each respective union be admitted to membership in the B., M. & P. I. U. local free of any penalty or initiation fee. All fines placed upon O. P. & C. F. I. A. members covering their actions in the above-named three cities are also hereby removed.

Seventh. In any city under a mixed charter of the B., M. & P. I. U. where there are but three or less plasterers affiliated, and there are five or more plasterers who are bona fide residents who are not members, the O. P. & C. F. I. A. is conceded the right to organize a union, and all B., M. & P. I. U. members following plastering shall become members of the newly chartered exclusive (O. P. & C. F. I. A.) Plasterers' Union free of initiation fee.

#### **"OFFENSIVE AND DEFENSIVE ALLIANCE"**

Eighth. That in all movements, "offensive or defensive," no subordinate local of either Interna-

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tional Union shall be permitted to take any action whatsoever until the question requiring joint action shall have first been acted upon and determined by the Presidents of the O. P. & C. F. I. A. and the B., M. & P. I. U.

Ninth. No movement of an "offensive" or "defensive" character shall be countenanced in cases where such would be in violation of any existing agreements.

#### RULES GOVERNING INTERCHANGEABLE CARDS

The rules governing the issuing of the interchangeable traveling card and the clearance card shall be subject to the rules agreed upon at the conference of October 30, 1906, and as revised at the conference of February 13, 1909.

In Witness Whereof, We, the undersigned, hereby set our hand and seal this eighteenth day of February, 1911.

For the O. P. & C. F. I. A.:

JOHN DONLIN, *President.*

EDW. J. MCGIVERN, *1st Vice-Pres.*

(SEAL)

PETER G. COOK, *3rd Vice-Pres.*

W. A. O'KEEFE, *Organizer.*

For the B., M. & P. I. U. of America:

WM. J. BOWEN, *President.*

THOS. R. PREECE, *1st Vice-Pres.*

WM. DOBSON, *Secretary.*

#### ACQUITTONE

At a meeting of the Joint Conference between the Executive Boards of the Bricklayers, Masons

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and Plasterers' International Union of America and the Operative Plasterers and Cement Finishers' International Association of the United States and Canada held in Atlantic City, February 27, 1930, it was agreed, that the above-named material and those of a similar character shall be installed on a fifty-fifty basis equally divided between the membership of the Operative Plasterers and Cement Finishers' International Association of the United States and Canada and the Bricklayers, Masons and Plasterers' International Union of America irrespective of thickness.

#### ARTIFICIAL STONE

In order to reach an amicable understanding between the B., M. & P. I. U., and the O. P. & C. F. I. A., regarding the installation of artificial stone or marble, the O. P. & C. F. I. A. concedes to the membership of the B., M. & P. I. U. the installation of artificial stone or marble when same are precast and of  $\frac{3}{4}$  of an inch or more in thickness. And the B., M. & P. I. U. concedes to the O. P. & C. F. I. A. the installation of said imitation stone or marble when same are less than  $\frac{3}{4}$  of an inch in thickness, also said artificial stone when same are applied to channel iron furring. It is also understood that each party hereto will confine their method of erection or application to the Craft method of erection or application employed heretofore and that the  $\frac{3}{4}$  inch thickness referred to heretofore is  $\frac{3}{4}$  inch in the body of piece not inclusive of any relief members or enrichments appearing on the surface.



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## **Tilelayers**

Owing to the fact that the Tilelayers' organization has ignored agreements held between themselves and the O. P. & C. F. I. A.; also the B., M. & P. I. U., the agreements were reported abrogated. The B., M. & P. I. U. assuming control of the tiling business.

### **AGREEMENT**

#### **(PREPARATION OF WALLS AND CEILINGS TO RECEIVE TILE)**

Agreement entered into this 22nd day of August, 1917, between the B. M. & P. I. U. and the O. P. & C. F. I. A. pertaining to the preparing or plastering of walls and ceilings which are to receive tile;

First. It is agreed that the plasterers of the O. P. & C. F. I. A. and the B., M. & P. I. U. shall prepare or plaster all walls which are to receive tile. They shall plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat which shall be put on by the Tilelayer to act as a bed for his tile.

Second. It is further agreed that the Plasterers of either the O. P. & C. F. I. A. or the B., M. & P. I. U. shall prepare or plaster all ceilings which are to receive tile. All ceilings must be leveled and rodged and properly scratched so as to guarantee adhesiveness of the final coat which shall be applied by the Tile Setter and act as a bed for his tile.

Third. It is further agreed that the Plasterers shall use only sand and cement in the preparation of work above stipulated unless otherwise specified by the architect.

Fourth. Any member of either organization that violates the above rules shall, upon conviction, be fined the sum of \$25.00.

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"Resolved, To qualify the agreement entered into between the Interstate Mantel and Tile Contractors' Association, Operative Plasterers and Cement Finishers' International Union and the Bricklayers, Masons and Plasterers' International Union of America to read:

"That three bathrooms, vestibules and small halls in private residences shall be plastered by the tile setter."

### AGREEMENT

"Agreement entered into this — day of — 1918, by and between the Interstate Mantel and Tile Contractors' Association, the Operative Plasterers and Cement Finishers' Association of the United States and Canada, and the Bricklayers, Masons and Plasterers' International Union of America.

"The purpose of this agreement is to prevent hereafter jurisdictional disputes that have existed for the past twenty years between the tile and plastering interests, and which have resulted in many strikes among the workmen involved to the detriment of employer and employee and the building public.

"First. It is agreed that all materials for plastering work entering into the preparation of all walls, ceilings, etc., to receive tile and other work, and conceded as coming under the jurisdiction of the Mantel and Tile Contractors' Association, shall be included in the estimate and contract and the work shall come under the jurisdiction of the Mantel and Tile Contractors.

"Second. It is agreed that the plasterers of the O. P. & C. F. I. A. and the B., M. & P. I. U.

shall prepare or plaster all walls and ceilings which are to receive tile, except the final setting bed, which shall be applied by the tilelayer

"Third. All preparation work shall be done in a thorough and workmanlike manner, and it is understood and agreed that all walls and ceilings shall be plumbed, leveled and rodged under the direct supervision of the tile layers.

(Signed) ED. J. MCGIVERN,  
*President O. P. & C. F. I. A.*  
PETER G. COOK,  
*Vice-President O. P. & C. F. I. A.*  
T. A. SCULLY,  
*Secretary O. P. & C. F. I. A.*  
W. A. O'KEEFE,  
*General Organizer O. P. & C. F. I. A.*  
WM. J. BOWEN,  
*President B., M. & P. I. U.*  
THOS. R. PREECE,  
*Vice-President B., M. & P. I. U.*  
WM. DOSSON,  
*Secretary B., M. & P. I. U."*

#### **Carpenters and Sheet Metal Workers**

#### **AGREEMENT**

For the purpose of bringing about conditions of harmony and co-operation the following agreement is this day entered into and agreed to by and between the Sheet Metal Workers' International Association and the United Brotherhood of Carpenters and Joiners of America:

It is agreed that members of the United Brotherhood of Carpenters and Joiners of America shall erect and install all interior metal trim such as

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bucks, jambs, doors, casings, base, chair-rail, picture mouldings, partitions, and all other material generally referred to as trim except toilet partitions, which shall be done by Sheet Metal Workers. Also when a sheet metal contractor who is engaged in manufacturing and erecting sheet metal products for building, such as cornices, sky-lights, metal roofing, ventilating work, etc., manufactures the material referred to as trim, with members of the Sheet Metal Workers' International Association they shall do the erecting of same in a manner that will comply with the working agreement now in force between the Sheet Metal Workers and said firms.

It is further agreed that in the setting of metal window frames that when frames are set, stayed, plumbed or braced such work shall be done by Carpenters, but if set or placed in an opening in walls left when a building is erected the work shall be done by Sheet Metal Workers. The hanging and adjusting of metal sash shall be done by Sheet Metal Workers. It is further agreed that any metal work in connection with store fronts shall be done by Sheet Metal Workers.

It is further understood and agreed that in the erection of metal column forms the erection shall be done by Sheet Metal Workers. Any framing in connection therewith shall be done by Carpenters.

It is further agreed that the installation of metal lockers, also the erection of ordinary plain metal shelving shall be done by Sheet Metal Workers.

It is further understood and agreed that the members of neither organization shall work on any building where non-union men of the other craft are employed.

If any misunderstanding arises as to the meaning or carrying out of any of the provisions contained

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herein the matter will be taken up with the General Presidents of the two organizations.

Dated March 21, 1928.

For United Brotherhood of Carpenters and Joiners:

WM. L. HUTCHESON, FRANK DUFFY.  
T. M. GUERIN.

For Sheet Metal Workers' International Assn.:

JOHN J. HYNES, R. PATTISON,  
ROBT. BYRON, W. J. ROONEY,  
JAMES T. MORIARTY, THOMAS FAY.

In the last part of paragraph Two of the agreement entered into the 21st day of March, 1928, by and between the Sheet Metal Workers' International Association and the United Brotherhood of Carpenters and Joiners of America, beginning with "Also," it is understood and agreed that this refers only to the firms now manufacturing hollow metal doors and trim in their own shops in the City of Chicago, and the erecting of same in accordance with the working agreement between the Sheet Metal Workers and said firms, now in force.

WM. L. HUTCHESON JOHN J. HYNES

Sheet Metal Workers-Asbestos Workers  
Agreement

Agreement entered into this 13th day of April, 1939, by and between the Sheet Metal Workers' International Association and the International Association of Heat and Frost Insulators and Asbestos Workers covering the application of insulating and acoustical materials on inside and outside of sheet metal ducts and fittings in connection with ventilation and air-conditioning systems.

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1. All insulating materials applied on outside of sheet metal ducts and fittings is recognized as coming within the jurisdiction of the International Association of Heat and Frost Insulators and Asbestos Workers.

2. All acoustical materials applied inside of sheet metal ducts and fittings, in shop or on job prior to erection of said ducts and fittings by Sheet Metal Workers, is recognized as coming within the jurisdiction of the Sheet Metal Workers' International Association.

3. All acoustical materials applied inside of sheet metal ducts and fittings on job after said ducts and fittings have been erected by Sheet Metal Workers is recognized as coming within the jurisdiction of the International Association of Heat and Frost Insulators and Asbestos Workers.

4. Any dispute or controversy arising out of the application or interpretation of this agreement shall be referred to and settled immediately by the General Presidents of the two International Unions involved, in accordance with the purpose and intent of this agreement.

(Signed)

FOR SHEET METAL WORKERS' INTERNATIONAL  
ASSOCIATION.

ROBT. BYRON, *General President.*

JAMES T. MORIARTY.

WM. O'BRIEN, *General Secretary-Treasurer.*

INTERNATIONAL ASSOCIATION OF HEAT  
AND FROST INSULATORS AND ASBESTOS  
WORKERS.

JOSEPH A. MULLANEY, *General President.*

C. W. SICKLES, *General Secretary-Treasurer.*

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Between the United Association of Journeymen Plumbers and Steamfitters and the United Brotherhood of Carpenters and Joiners of America.

**BATH AND TOILET ROOM ACCESSORIES AND  
MEDICINE CABINETS**

It is agreed that the installation of all bath and toilet room accessories, such as paper holders, towel rails or bars, glass holders, glass shelves, etc., however installed, shall be the work of the members of the United Association of Journeymen Plumbers and Steamfitters.

Further, that the installation of bath and toilet room medicine cabinets shall be the work of the members of the United Brotherhood of Carpenters and Joiners of America.

**UNITED ASSOCIATION OF JOURNEYMEN  
PLUMBERS AND STEAMFITTERS.**

**GEORGE MASTERTON.  
JOHN COEFIELD.**

**UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA.**

**M. A. HUTCHESON.  
WM. L. HUTCHESON.**

Dated at Cincinnati, Ohio, September 29, 1939

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## **AGREEMENT**

Agreement between the United Brotherhood of Carpenters and Joiners of America and the Operative Plasterers' and Cement Finishers' International Association of the United States and Canada, at the headquarters of the First Named Organization, Carpenters' Building, Indianapolis, Ind., June 13, 1944.

This Agreement entered into by and between the United Brotherhood of Carpenters and Joiners of America, the Operative Plasterers' and Cement Finishers' International Association of the United States and Canada, in the matter of jurisdiction to govern the fabrication and setting of screeds and forms used in connection with the placing and finishing of cement or concrete, shall be as follows:

1. The setting of screeds of lumber, metal or other materials to determine the proper grade of concrete, when used to serve as forms, such as 2" by 4"s, or other plain pieces of material, when held in place by stakes and/or spreaders shall be done by Cement Finishers, members of the O. P. & C. F. I. A. and B. M. & P. I. U.

A screed is a strip of wood or metal used as a guide for leveling or grading a concrete floor, slab or sidewalk.

2. The fabricating of all screeds and stakes, for any purpose, and the construction and setting of all forms shall be done by Carpenters, members of the U. B. of C. & J. of A.

A form is a built-up section of wood, metal or composition board used for the purpose of moulding concrete to a given line or shape.

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3. Any bulkhead that is one single board in height, and that has no key attached or which is not notched or fitted shall be set and braced or staked by Cement Finishers, providing same is used as a screed. The term bulkhead shall mean a form or screed erected for the purpose of separating pours of concrete. Any bulkhead that must be notched or fitted, or which has a key attached, or which is over one board high, or any bulkhead that is not used as a screed, shall be fabricated and set by Carpenters.

For the U. B. of C. & J. of A.:

**M. A. HUTCHESON**, *First General Vice President.*

**JOHN R. STEVENSON**, *Second General Vice President.*

For the O. P. & C. F. I. A.:

**JOHN E. ROONEY**, *General President.*

**JOHN J. HAUCK**, *First Vice President.*

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## MEMORANDUM OF UNDERSTANDING

By and between

The International Brotherhood of Electrical  
Workers

and

The International Hod Carriers', Building and  
Common Laborers' Union of America\*

1. The International Brotherhood of Electrical Workers recognizes the jurisdiction of the International Hod Carriers', Building and Common Laborers' Union of America over such work as all digging, excavating, grading, backfilling, cutting and replacing of all pavements and the handling of all material in connection therewith, performed for Gas Utility Companies, affiliated or non-affiliated with the Electric Utilities, in all cases except where the International Brotherhood of Electrical Workers has agreements now in effect as of this date. Such agreements shall continue until the next termination period effective in said agreements and the International Brotherhood of Electrical Workers agrees to exercise all options to change said agreements to conform with the description of jurisdiction as above outlined by serving such notice as may be required to effect such change. If, however, the International Brotherhood of Electrical Workers, at such period or periods of termination, is convinced that the termination of any such agreements would impair the prestige of the Electrical Workers in the Electric Public Utility field, the

\* For full report see page 123 of the Proceedings of the 34th Annual Convention, New Orleans, 1944.

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matter of termination of said agreements will be taken up and discussed by both parties to this memorandum of understanding with the protection of the mutual welfare and interest of both parties to this memorandum of understanding being the paramount and deciding factor. When such termination or changes are effected, the work shall revert to and be considered the work of the Laborers, parties hereto.

2. It is recognized by both parties hereto that all provisions with respect to the work herein defined will apply in the instances of work in connection with water and steam, in the same manner and to the same effect as applies to gas. Likewise, the provisions relative to agreements now in effect apply on steam and water equally with gas.

3. The International Brotherhood of Electrical Workers reserves its established jurisdiction over right of way clearance performed by members of the International Brotherhood of Electrical Workers employed directly by Electric Utilities.

4. The International Brotherhood of Electrical Workers recognizes that the work of right of way clearance, with the exception of the digging of post holes and anchors and the back-filling of same, performed on or in connection with transmission line construction, through contracts, or on R. E. A. projects, is the jurisdiction of the International Hod Carriers', Building and Common Laborers' Union of America.

5. The International Hod Carriers', Building and Common Laborers' Union of America recognizes the jurisdiction of the International Brotherhood

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of Electrical Workers over handling of all electrical material, beginning with the unloading at the first point of delivery on the job, and continuing through its ultimate use or disposal.

6. Both parties to this understanding and agreement agree that there shall be no compacts entered between either party and any third parties in a jurisdictional issue affecting or involving either party hereto.

7. Both parties hereto agree that in the instance of any issues arising on work not herein covered or outlined, the settlement and disposal of such issues shall be only through procedures before proper tribunals, established within the American Federation of Labor, or through methods agreed upon by the International Presidents of the organizations parties hereto.

The International Brotherhood of Electrical Workers and the International Hod Carriers', Building and Common Laborers' Union of America hereby affix the signatures of the respective International Presidents in acknowledgement of an agreement to terms of understanding herein described, this third day of February, 1940, at Miami, Fla.

(Signed) D. W. TRACY,

*General President, International Brotherhood  
of Electrical Workers.*

Signed JOS. V. MOKESCHI,

*General President, International Hod Carriers',  
Building and Common Laborers' Union of  
America.*

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## ARTICLES OF AGREEMENT

Between the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, Hereinafter Referred to as the United Association, and the International Brotherhood of Boiler Makers, Iron Ship Builders, Welders and Helpers of America, Hereinafter Referred to as Boiler Makers.

For the purposes of eliminating jurisdictional disputes between the membership of these two International Unions, and for the further purpose of laying the groundwork for extensive cooperation and fraternal good will between the two memberships, and for the additional purpose of cooperating together in the unionization of those industries and firms in which we are jointly interested, the representatives of the two International Unions hereby undertake to dispose of the questions existing between them which have provoked jurisdictional disputes. In so doing it should be understood by all concerned that we are attempting only to settle controversies between ourselves and are not undertaking to settle disputes which either of the organizations herein involved may have with other International Unions, or to dispose of work which properly belongs to any other International Union.

### Refinery Installation

1. On the equipment that has caused considerable misunderstanding in the industry, the United Association of Journeymen Plumbers and Steamfitters and the International Brotherhood of Boiler Makers, Iron Ship Builders, Welders and Helpers of America have agreed on the following division of work, viz.:

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2. The installation of tubes in pipe stills or furnaces, commonly called oil heaters, will be handled, installed and finished by a composite crew equal in number of Boiler Makers and members of the United Association.

3. The erection of furnace frame, casing, doors and support will be performed by Boiler Makers.

4. All circulating piping, pipe hangers and oil burners will be installed by the United Association.

5. The installing or removing of cooler, condenser and heat exchanger tube, or tubes of the shell and tube type of equipment, by any mode or method, shall be the work of the Boiler Maker.

6. The building of cooler, condenser and heat exchanger pipe coils, by any mode or method, shall be the work of the United Association.

7. The handling and setting of all work in connection with bubble or fractionating towers, reaction chambers or evaporators, trays, cups, baffles, tube sheets, tubes or other interior equipment shall be the work of the Boiler Maker.

The United Association shall perform all internal and external piping, valves, strainers and floats.

8. The application or installation of braces and supports, riveted to pressure vessel, is the work of the Boiler Maker.

9. The handling and placing of washers and agitators, including baffles, is the work of the Boiler Maker.

10. Cooling tower pans, frames and condenser boxes is the work of the Boiler Maker.

Coils and all pipe work in connection with same is the work of the United Association.

11. All work in connection with coke stills and asphalt stills is the work of the Boiler Maker.

All pipe work in connection with the same is the work of the United Association.

12. The handling and setting of completed heat exchangers is the work of the United Association.

#### **Pipelines**

13. It is hereby recognized that all transportation oil and gas lines is the work of the United Association.

14. Plate fabricated aqueducts or water lines to the point where it enters city or town distributing system, whether riveted or welded, is the work of the Boiler Maker.

Where flange or other patent joints are used it is the work of the United Association.

15. Plate fabricated intake and discharge lines in power plants, where riveted or welded joints are used, is work of the Boiler Maker.

Where flange or other patent joints are used it is the work of the United Association.

16. All other classes of manufactured pipe—regardless of material—used in the pipefitting industry, is the work of the United Association.

#### **Tanks**

17. Completed tanks which are an integral part of a piping job shall be installed by members of the United Association.

Knockdown or completed tanks which are not an integral part of a United Association installation, for example, brewery vats, distillery vats, etc., in or on buildings, shall be the work of the Boiler Maker.

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18. All tankage for the storage of petroleum products in the petroleum industry, including bulk storage plants and all water towers, standpipes or water storage reservoirs, shall be the work of the Boiler Maker.

All pipe work in connection with same is recognized as the work of the United Association.

19. The erection and repair of gas holders is recognized as the work of the Boiler Maker.

All pipe work in connection with same is recognized as the work of the United Association.

### **Boilers**

20. Hot and cold air and gas ducts in connection with boilers, furnaces or other duct work incidental to Boiler Makers' installation is the work of the Boiler Maker.

21. It is hereby recognized that the building of boilers, including economizers, superheaters, air heaters, casings, burner boxes, down comers, sludge boxes and sluice troughs, completed marine bent tube boilers, breechings, stacks and all air and gas ducts in connection with same is the work of the Boiler Maker.

Soot blowers, fuel piping, valves, boiler trimmings, the setting of completed boilers and knock-down cast iron boilers and all pipe work in connection with same is the work of the United Association.

22. The burning and welding on work in the jurisdiction of the United Association will be performed by the members of the United Association.

Burning and welding on work in the jurisdiction of the Boiler Maker shall be performed by the Boiler Maker.

23. The handling and rigging of all materials and equipment coming under the jurisdiction of these two trades will be performed by each respective trade.

24. It is understood that each class of work listed above, under the several sub-heads, stands alone by itself and no combination of sub-sections can be used to produce a result not contemplated by this agreement, as this agreement is fairly and honestly entered into and must be so applied.

25. Questions may arise which are not specifically covered by the articles of this agreement and it is understood that our respective officers and representatives will make a sincere effort to reach an amicable understanding based upon the broad principles herein laid down.

26. All new questions which may arise and which are not clearly covered by the terms of this agreement and that have failed of settlement locally between representatives of the two Organizations shall be jointly submitted to the two International Presidents or the officer acting in his place, with all supporting data and argument.

If the International Presidents fail to agree, they may submit same to a neutral umpire, jointly selected by them.

The work disposed of by this agreement shall not be subject to further arbitration or interpretation by any tribunal.

27. This agreement supersedes and voids all previous agreements between the United Association and the International Brotherhood, and likewise voids all decisions on controversies which occurred between the two International Organizations or between their affiliated local unions, affecting the

United Association and the International Brotherhood, or by the American Federation of Labor, or the Building and Construction Trades Department of the American Federation of Labor, or by any other tribunal prior to the effective date of this agreement.

United Association of Journeymen  
Plumbers and Steamfitters of the  
United States and Canada:

CHARLES N. RAU.

LEO A. GREEN.

MICHAEL F. GARRETT.

International Brotherhood of Boiler  
Makers, Iron Ship Builders,  
Welders and Helpers of America:

CHAS. J. MACGOWAN.

HARRY NICHOLAS.

Signed at Chicago, Ill., this 1st day of August,  
1941.

Approved:

GEORGE MASTERTON,  
*General President.*

WM. E. WALTER.

J. A. FRANKLIN,  
*International President.*

By the action of the 35th Annual Convention of the Building and Construction Trades Department the agreement made by and between the United Association of Plumbers and Steam Fitters and the International Brotherhood of Boiler Makers, Iron Ship Builders, Welders and Helpers of America was accepted, with the understanding that this agreement incorporated in the permanent record of the Department would not interfere with

or alter the jurisdiction of any other National or International Union affiliated with the Building and Construction Trades Department.

**Addendum to Agreement**

**Re: Clarification—Rule 21—Agreement—International Brotherhood of Boiler Makers, Iron Ship Builders, Welders and Helpers of America and United Association of Journeymen Plumbers and Steamfitters of the United States and Canada.**

Subsequent to the writing of the terms of the agreement there has been a question raised regarding the jurisdiction of work in connection with attemporators which was not included in Rule 21 of the above agreement. Hence, it is agreed by the above contracting parties that the word "attemporator" shall be included in Rule 21 paragraph 1, after the word "superheaters."

It is further discovered that a further clarification of Rule 21, paragraph 2, should be made by inserting in Rule 21, paragraph 2, in the second line after the word "trimmings" the following language: "All circulating piping for appurtenances and component parts of boiler."

The amended Rule 21 would then read as follows:

"It is hereby recognized that the building of boilers, including economizers, superheaters, attemporators, air heaters, casings, burner boxes, downcomers, sludge boxes and sludge troughs, completed marine bent tube boilers, breechings, stacks, and all air and gas ducts in connection with the same is the work of the Boiler Maker."

"Soot blowers, fuel piping, valves, boiler trimmings, all circulating piping for appurtenances and component parts of the boiler, the setting of com-

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pleted boilers and knockdown cast iron boilers and all pipe work in connection with same is the work of the United Association."

The agreement of August 1, 1941, between the two International Organizations has reduced jurisdictional disputes between these two Organizations to a very minimum and this clarification is made in the hope that it may entirely eliminate any further jurisdictional misunderstandings.

(Signed) JOHN J. MCCARTIN,  
*Special Representative.*  
United Association of Journeymen  
Plumbers and Steamfitters.

(Signed) J. A. FRANKLIN,  
*International President,*  
International Brotherhood  
of Boiler Makers.

March 20, 1942.

#### AGREEMENT

Between the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and the International Brotherhood of Electrical Workers\*

It is hereby agreed that the operators of vehicles delivering electrical material come under the jurisdiction of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

It is further agreed that the operators of vehicles used for electrical construction work, maintenance work or electrical repair work—that is, when such vehicles are used for transporting man or men and/or material to and from job, and said vehicle

\* For full report see Case 41 of Executive Council's Annual Report, 1942.

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remains at job site with man or men in the performance of electrical work, and the operation of the vehicle is an integral part of the work—such operator comes under the jurisdiction of the International Brotherhood of Electrical Workers.

It is understood and agreed that the equipment operated by electrical workers shall only be the truck carrying the line and maintenance crews, tools, etc., to and from the job, or the emergency car from electrical contracting shops carrying only tools and repair equipment for emergency work. Operation of all delivery equipment for the delivery of materials of all character, such as poles, pipes, transformers, cables, and electrical appliances, such as refrigerators, radios, etc., shall be the jurisdiction of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

Signed this 11th day of February, 1942.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers:

JOHN M. GILLESPIE,  
*General Secretary-Treasurer.*

DAVE BECK,  
*Vice President.*

International Brotherhood of Electrical Workers:

G. M. BUGNIAZET,  
*International Secretary.*

CHARLES M. PAULSEN,  
*Chairman, Executive Council.*

EDWARD J. BROWN,  
*International President.*

**Agreement (Pointing or Caulking Around Steel Window Sash)**

Agreement entered into April 12, 1919, at Indianapolis, Ind., between the Executive Officers of the B. M. & P. I. U. and the O. P. & C. F. I. A. as follows:

"It was agreed that the pointing around steel sash on exclusive concrete shall be done by the members of the O. P. & C. F. I. A. The pointing of all steel sash where whole or part is masonry shall be done by the members of the B. M. and P. I. U."

**For the O. P. & C. F. I. A.**

**EDWARD J. MCGIVERN, President.**

**PETER G. COOK, First Vice-President.**

**THOMAS A. SCULLY, Secretary-Treasurer.**

**W. A. O'KEEFE, Organizer.**

**For the B. M. & P. I. U.**

**WILLIAM J. BOWEN, President.**

**THOMAS E. PRESCOTT, First Vice-President.**

**WILLIAM M. DOWSON, Secretary.**

**Agreement for Avoidance of Dispute Between  
United Slate, Tile and Composition Roofers  
and Sheet Metal Workers' International  
Association**

**(Entered by Seattle Convention, Building Trades  
Department, November, 1919)**

**DECISION RENDERED, JULY 12, 1922**

In the matter of the subject referred to in the foregoing title, it is the decision of the Board that the following agreement be concurred in:

Upon that portion of the report of the Executive

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Council under the above caption the committee reported as follows:

"The representatives of the Sheet Metal Workers and the Slate, Tile and Composition Roofers appeared before your committee and requested that they be given an opportunity to reach an agreement. The request was granted and the following represents the agreement reached by the trades in interest:

"This agreement made and entered into at Atlantic City, N. J., July 25, 1913, by and between the Sheet Metal Workers, party of the first part and the Slate, Tile and Composition Roofers, party of the second part, in pursuance of correspondence and action thereon as found on page 76 of the Report of the Proceedings of the Sixth Annual Convention of the Building Trades Department, whereby the party of the first part agrees to cause its affiliated local unions and their members to respect and observe the trade jurisdiction of the party of the second part as approved by the Building Trades Department of the American Federation of Labor, and refrain from doing any work granted to said party of the second part in the aforesaid jurisdiction in all towns and localities, where the party of the second part has a duly chartered local union.

"The party of the second part agrees to cause all its local unions and their members to observe and respect the jurisdiction of the party of the first part as established and approved by the Building Trades Department of the American Federation of Labor."

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## **MEMORANDUM OF UNDERSTANDING**

**Between**

**The Operative Plasterers' and Cement Finishers'  
International Association,**

**The Bricklayers, Masons and Plasterers'  
International Union**

**and**

**The International Hod Carriers', Building and  
Common Laborers' Union**

1. This memorandum of understanding shall only cover the performance of work coming under the jurisdiction of either the Cement Finishers or Laborers in connection with the preparation, pouring, placing, spreading, rodding and finishing of cement or concrete on highways, roads, streets and airport runways.

2. The mixing, handling, pouring, puddling, blocking, vibrating and spreading of all concrete shall be the work of the Laborers. The setting, leveling and lining of all slab steel forms on roads, highways and streets shall be the work of the Laborers.

3. All labor on center expansion machine, all expansion and contraction joints, center strips and center steel shall be the work of the Laborers.

4. The handling of bull floats where bull float is used for strike off shall be the work of the Laborers.

5. The tending to Cement Finishers, the handling and distributing of all material on sidewalks, curbs and gutters is the work of the Laborers.

6. The setting of all forms for sidewalks, curbs

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and gutters shall be the work of the Cement Finishers.

7. Straight edging, floating, trowelling, edging, rubbing and brushing shall be the work of the Cement Finishers.

8. It is understood that this memorandum is entered into for the purpose of clarifying jurisdiction as outlined above and in the event of any dispute arising in connection with the work as outlined above, the said dispute shall be referred to the General Presidents of the International Unions parties hereto. In the event of any dispute arising on any work not covered by this agreement such as bridges, viaducts and underpasses, the said dispute shall be immediately referred to the General Presidents of the International Unions involved, or to whomever the said General Presidents may assign, for the purpose of attempting to adjust the said dispute amicably. During the period of time that these attempts are being made for adjustment there shall be no stoppage of work on the job.

Operative Plasterers' and Cement Finishers' International Association:

JOHN E. ROONEY,  
*President.*

JOHN J. HAUCK,  
*First Vice President.*

Bricklayers, Masons and Plasterers' International Union:

HARRY C. BATES,  
*President.*

A. J. CLELAND.

International Hod Carriers', Building and Common Laborers' Union of America:

JOS. V. MOKESCHI,  
*General President.*

JOHN W. GARVEY.

July 19, 1948

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Attested: RICHARD J. GRAY,  
*President, Building and Construction  
Trades Department, AFL.*

**AGREEMENT UNDER NATIONAL JOINT  
BOARD FOR SETTLEMENT OF JURIS-  
DICTIONAL DISPUTES, BUILDING AND  
CONSTRUCTION INDUSTRY**

We the undersigned request that Joint Board No. 1 be discharged. "The issue in dispute is the laying of wood fibre conduit underground for the carrying of electrical wires and cables."

It is agreed that this work is the work of the International Brotherhood of Electrical Workers.

Signed this 18th day of July, 1948.

International Hod Carriers', Building  
and Common Laborers' Union of  
America: JOS V. MORESCHI,  
*General President.*

International Brotherhood of Electri-  
cal Workers: D. W. TRACY,  
*International President.*

Attested: RICHARD J. GRAY,  
*President of the Building and Con-  
struction Trades Dept., A. F. of L.*

**Iron Workers—Elevator Constructors  
Directional Elevators**

**AGREEMENT**

May 26, 1953

For the purpose of establishing complete har-  
mony and cooperation on the erection of two  
directional elevators for the Bowser Engineering

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Company in various parts of the country, the International Association of Bridge, Structural and Ornamental Iron Workers, and the International Union of Elevator Constructors, hereby enter into the following agreement, effective on and from June 1, 1953.

One team of elevator constructors to not less than two iron workers while installing the following: 1—crane rails, 2—crane bridges, 3—hoisting of all elevator equipment necessary to be in place before pent house roof is poured, 4—optional hoisting of crane drives, 5—all hatchway steel that replaces normal elevator hatchways, 6—catwalks, platforms, stairways and ladders.

The Bowser Engineering Company agrees to pay iron workers the regular wage scale in the jurisdiction of the Local Union in which the project is located plus 25 cents per hour to one iron worker who acts as foreman under the supervision of the elevator mechanic on the job.

Signed for International Association of Bridge, Structural & Ornamental Iron Workers:

JOHN L. MCCARTHY, *Gen. Vice President.*

Signed for International Union of Elevator Constructors:

J. A. ALTMAN, *Reg. Business Representative.*  
Attested July 10, 1953

JOHN T. DUNLAP, *Chairman*  
*National Joint Board.*  
Boilermakers-Ironworkers

"September 23, 1953

The undersigned representatives of the International Association of Bridge, Structural and Ornamental Iron Workers and the International Brotherhood of Boilermakers, Iron Shipbuilders,

Blacksmiths, Forgers and Helpers recommend to the respective General Presidents the attached agreement for the settlement of jurisdictional disputes between the two organizations.

(Signed) J. R. DOWNES,  
*International Association of Bridge,  
Structural and Ornamental Iron Work-  
ers*

(Signed) J. P. MCCOLLUM,  
*International Brotherhood of Boiler-  
makers, Iron Shipbuilders, Blacksmith,  
Forgers and Helpers."*

September 23, 1953

### Memorandum of Agreement

This memorandum of agreement between the International Association of Bridge, Structural and Ornamental Iron Workers and the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers supplements and interprets the agreement of October 15, 1928 between the two organizations and the decision of record of May 19, 1947.

It is the purpose of this agreement to improve relations between the two trades, to eliminate work stoppages which are costly to the membership of both organizations and to the industry, to settle jurisdictional disputes directly between the two trades, and mutually to assist each union to secure work coming within its recognized jurisdiction. In order to achieve these objectives, it is mandatory upon the membership of local unions affiliated with both International Unions to comply with the provisions of this memorandum of agreement.

It is expressly understood and agreed that this agreement shall not relate to or have any bearing

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on jurisdictional disputes that may exist or in the future occur, between either of the parties hereto with any other International Union or subordinate body thereof.

1. **WIRE MESH.** Wire mesh when attached or welded directly to the breeching, stacks or vessels shall be installed by Boilermakers, and wire mesh when attached or fastened to lugs, clips, bolts, nuts or any other attachments (which have already been attached or welded to the breeching, stacks or vessels by Boilermakers) shall be installed by Iron Workers.

2. **DERRICKS.** Where a derrick is used by both crafts, one craft shall erect and the other craft shall dismantle same. Where such derrick is used only by one of the crafts, then that craft shall erect and dismantle same.

3. **PRECIPITATORS.** Plate work and buck-stays and internals shall be the work of the members of the Boilermakers; structural supports shall be the work of the Iron Workers including the house roof. Roof supports or lugs attaching directly to the precipitator shell shall be the work of the Boilermakers. When roof supports attach to lugs, the Boilermakers shall weld the lug to the precipitator shell and the Iron Workers shall erect the roof supports thereto.

#### **4. OVERHEAD SUPPORTING STEEL FOR STEAM GENERATORS**

(a) The erection of structural members, which may be channels, beams or angles, and which are directly attached to and suspended from the building roof steel for the purpose of supporting the steam generating unit shall be the work of the Iron Workers.

(b) The erection of all rods or other steel mem-

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bers, attached to the members described in paragraph (a), and used for the purpose of supporting tubes and other Boilermakers' work, shall be performed by the Boilermakers.

## **5. THE ERECTION AND REPAIR OF BLAST FURNACES**

The following work items shall be erected and installed by the Iron Workers:

Foundation rod and bands

Column bases and columns

Main, top furnace platform (except supports which weld, or rivet to shell)

Top super-structure

Bell trolley

Bell beams

Bell cables

Jib-crane and mast

All top mechanism such as large bell, small bell, bell rods, large bell hopper, gas seal hood, distributor, revolving hopper, receiving hopper and small bell seat

Skip bridge

Skip cars and cables

Skip operating mechanism such as skip hoist, large and small bell cylinders

Cast house structural steel and roof

Skip house

Skip bridge A-frame

Iron and cinder runners and cast house auxiliaries

Trestle and stock house parts such as coke, stone and ore bins

Coke and ore chutes

Scale car and larry cars

Pug mill machinery

Elevator shafts

The following work items shall be erected and installed by the Boilermakers:

- Hearth jacket
- Hearth coolers
- Tuyere jacket
- Blast furnace shell
- Bustle pipe
- Furnace top ring and dome
- Offtakes—Uptakes
- Downcomers and attached wearing plates
- Bleeder pipe, valves and stack
- Bosh band
- Dust catcher
- Hot blast stoves
- Hot blast valves and castings
- Gas washer
- Gas mains
- Gas precipitators
- Cold blast main and mixer line
- Stove stacks
- Dust legs
- Hot ladle cars
- Support for main top furnace platform which weld or rivet to shell
- Stock line brackets and abrasion or wearing plates
- Tuyere stocks

#### 6. CATWALKS, PLATFORMS, STAIRWAYS AND LADDERS

(a) Catwalks, platforms, stairways, and ladders erected on storage tanks for liquid or gas, and processing tanks erected by the Boilermakers, and installations commonly referred to as tank farms shall be performed by Boilermakers.

(b) Catwalks, platforms, stairways and ladders

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supported exclusively by a pressure vessel, such as a bubble or fractionating vessel, shall be erected by Boilermakers.

(c) Catwalks, platforms, stairways, and ladders supported by structural steel supports shall be erected by Ironworkers. When supported by both the pressure vessel and structural steel supports, the erection of the catwalks, platforms, stairways and ladders shall be performed by Iron Workers, except that the welding or attaching of the lug or support directly to the pressure vessel shall be performed by Boilermakers.

(d) Catwalks, platforms, stairways, and ladders in connection with blast furnace construction shall be performed as follows:

(i) The Boilermakers shall attach the lugs or supports directly to the shell of the blast furnace and the Iron Workers shall then erect the catwalks, platforms, stairways, and ladders.

(ii) The erection of catwalks, ladders and stairways on hot stoves and precipitators in connection with the blast furnace construction, in accordance with paragraph (b) of this section, shall be erected by Boilermakers. The erection of the platforms and bridgways across the top of hot stoves, however, shall be erected by iron workers, except that the welding or attaching of the lugs or supports directly to the hot stove shall be performed by Boilermakers.

#### **7. FORCED AND INDUCED DRAFT FANS.**

The erection of forced and induced draft fans in connection with the construction of steam generating installations, which come in completed units, shall be performed by Iron Workers. Attachments to the ducts and breeching shall be performed by Boilermakers. On forced and induced draft fans,

which come knocked down, the Iron Worker shall erect and install the pedestal and rotor and the Boilermakers shall erect and install the fan housing.

#### 8. PROCEDURES.

(a) The General President of each organization will designate a representative to be assigned to adjust directly all disputes between the two trades which can not be adjusted at the local level.

(b) Committees designated by the respective General Presidents shall meet periodically to review work covered by this agreement and to consider new problems which arise in order to adjust same.

(c) Installations in process on the date of this agreement shall be completed in accordance with the existing assignments or ruling of the National Joint Board.

International Association of Bridge, Structural and Ornamental Iron Workers

St. Louis, Missouri

(Signed) J. H. LYONS,  
General President

(Signed) J. R. DOWNES,  
General Secretary

Approved Nov. 2, 1953,  
General Executive Council.

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers  
Kansas City, Kansas.

(Signed) CHAS. J. MACGOWAN,  
International President.

(Signed) WM. J. BUCKLEY,  
International Sec.-Treas.

Approved Nov. 5, 1953,  
International Executive Council.

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**Straight Telegram**

**St. Louis, Mo., November 2, 1953.**

**Charles J. MacGowan, International President  
International Brotherhood of Boiler Makers, Iron  
Ship Builders and Helpers of America  
New Brotherhood Building  
Kansas City, Kansas**

This is to notify you that the Executive Council of the International Association of Bridge, Structural and Ornamental Iron Workers at its meeting today unanimously ratified and adopted the memorandum of agreement dated September 23, 1953, which supplements and interprets the agreement of October 15, 1928, between our two respective organizations as well as decision of record of May 19, 1947.

**JOHN H. LYONS, General President.  
International Brotherhood of Boilermakers, Iron  
Ship Builders, Blacksmiths, Forgers and Helpers  
November 10, 1953.  
File: 12(i)-1(c)**

**Mr. J. H. Lyons, President  
Intl. Bridge & Structural Iron Workers  
Sta. 300, Continental Building  
3615 Olive Street  
St. Louis, Missouri**

**Dear Sir and Brother:**

Under date of November 6, 1953, I wired you as follows:

"This is to officially notify you that our International Executive Council after devoting a full day to the discussion of the proposed memorandum of agreement dated September 23, 1953, which implements and interprets the agreement of October 15, 1928, finally approved same by a

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unanimous vote of the Executive Council. However in the discussion it developed that one or two minor clarifications may be necessary in order to avoid future misunderstandings by our respective memberships. These clarifications will in no sense alter the purpose of the memorandum of September 23, but will in truth and in fact be clarifications only. I shall write you the details of the same next week. I am furnishing John Dunlop with a copy of this telegram."

Now, Brother Lyons, it is needless for me to say that the discussions in our International Executive Council were long and earnest over the question of approving the proposed supplementary agreement. While it was finally adopted by a unanimous vote, it was the feeling of the International Executive Council that there was one principle involved which should be protected, from our standpoint, and there were at least two additional clarifications which should be incorporated in order to make the understanding as effective as possible.

The principle to which I refer was the question of our craft deviating from our historic position that all vessels requiring tight joints must be the work of the Boilermakers and the allotment of the bells in blast furnaces to any other trade was a departure from our traditional policy. I assure you it was not the amount of work involved which caused us our difficulty, but rather the principle of a "tight joint." However, in our earnest desire to reach a peaceful understanding between the two International Unions, we accepted the assignment of bells, but with the hope that the two Internationals could agree to an interpretation to be added as a footnote to the first portion of section 5.

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captioned, "The Erection and Repair of Blast Furnaces," this footnote to read substantially as follows:

"It is mutually agreed between the two International Unions that the awarding of the blast furnace bells to the Structural Iron Workers is without prejudice to the Boilermakers' historic claims over all vessels requiring tight joints."

In the second portion of section 5, which is the Boilermakers' list of work, it occurred to us that the negotiators unintentionally overlooked the word "mantle" and if it is agreeable to all parties, we would request that the word "mantle" be inserted in the proper place in the list of work awarded to the Boilermakers.

Returning to section 4, captioned, "Overhead Supporting Steel for Steam Generators," it was the opinion of our International Executive Council that while the intent of the two organizations is covered in this section, it was our feeling that in order to avoid future disputes, the language needs clarifying, particularly where in sub-section (a) (Iron Workers' section), the words "for the purpose of supporting the steam generating unit" and in sub-section (b) (Boilermakers' section), the words "... used for the purpose of supporting tubes and other Boilermakers' work ..." might be interpreted in such a manner as to cause confusion because, after all, the complete boiler is still a steam generating unit from the standpoint of the Boilermaker and tubes are but a part of the steam generating unit. It is our suggestion that after the words "Boilermakers' work" in the third line of section 4 (b), the words "which are a part of the steam generating unit" be added so that the whole section will read:

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"The erection of all rods or other steel members, attached to the members described in paragraph (a), and used for the purpose of supporting tubes and other Boilermakers' work, which are a part of the steam generating unit, shall be performed by the Boilermakers."

If it is agreeable with you, I would suggest that Secretary Downes and Vice President McCollum have a further meeting and see if it is not possible to work out these suggestions, which, I repeat again, are not intended to change the intent of the agreement in any manner other than to clarify it to avoid confusion.

With best wishes, I am

Fraternally yours,  
CHARLES J. MACGOWAN,  
*International President.*

CJM:CW

cc: John Dunlop  
cc: J. R. Downes  
cc: J. P. McCollum  
OEIU No. 4-AFL

International Association of Bridge, Structural  
and Ornamental Iron Workers

January 9, 1964.

Mr. J. P. McCollum, Vice President  
International Brotherhood of Boilermakers,  
Iron Ship Builders, Blacksmiths, Forgers  
and Helpers

New Brotherhood Building  
Kansas City 11, Kansas

Dear Sir and Brother:

The correspondence dated November 10, 1963, directed by Charles J. MacGowan, International President of the Brotherhood of Boilermakers, to J. H. Lyons, General President of this International Association, as well as the correspondence

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dated November 13, 1953, from General President Lyons to International President Charles J. MacGowan, has been reviewed by the writer.

It is the opinion of the officials of this International Association that the suggestions outlined by President MacGowan warrant consideration and that, for the purpose of clarification, further understandings should be developed.

Inasmuch as the "Memorandum of Agreement" dated September 23, 1953—and signed by yourself and the writer—has been ratified by the International Executive Council of the Brotherhood of Boilermakers, and the General Executive Council of this International Association, it is our opinion that no change should be made in this document as such action would require further ratification from the Executive Councils of both organizations.

It is agreeable to the officials of this International Association that the following clarifications will be stipulated:

"It is mutually agreed between the two International Unions that the awarding of the blast furnace bells to the Structural Iron Workers is without prejudice to the Boilermakers' historic claims over all vessels requiring tight joints."

It is also understood that the work item "mantle" should be included in the Boilermakers' division of Section 5 of the "Memorandum of Agreement."

It shall be understood that the meaning of Section 4, Paragraph (b) of the "Memorandum of Agreement"—captioned OVERHEAD SUPPORTING STEEL FOR STEAM GENERATORS—shall be as follows:—

"The erection of all rods and other steel members, attached to the members described

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in Paragraph (a) and used for the purpose of supporting tubes and other Boilermaker's work, which are a part of the steam generating unit, shall be performed by the Boilermakers."

I believe that confirmation of these clarifications by International President Charles J. MacGowan and General President J. H. Lyons, as well as yourself and the writer, would be sufficient and thereby eliminate any need to reopen the present "Memorandum of Agreement" as ratified by both International Unions.

I am, with best wishes

Fraternally yours,

J. R. DOWNES,  
*General Secretary.*  
January 18, 1954

JRD:HB

R. J. Gray, President  
Building & Construction Trades Department  
American Federation of Labor  
Washington, D. C.

Dear Mr. Gray:

I am advised that you have received the agreement signed by President J. H. Lyons and President Charles J. MacGowan, dated January 12, 1954, an identical communication which was sent to the National Joint Board.

In accordance with Article III, Section 2 of the Agreement creating the Joint Board, I hereby attest to this agreement.

It is my understanding that the two organizations intend to print the agreement in convenient form in the near future.

Very truly yours  
(Signed) JOHN T. DUNLOP  
*Chairman*

JTD:thw

National Joint Board

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September 12, 1954

Wm. J. McSorley, General President  
Wood, Wire and Metal Lathers International  
Union

Ambassador Hotel  
Los Angeles, Calif.

Dear Sir and Brother:

At your request and in order to avoid any misunderstandings with the Wood, Wire and Metal Lathers International Union, the undersigned wish to advise that Section 1, captioned "Wire Mesh" of the Memorandum of Agreement dated September 23, 1953, entered into between the International Association of Bridge, Structural and Ornamental Iron Workers and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers is not intended and does not apply to the erection of light iron furring or metal lath used to receive plaster.

Fraternally yours,

(Signed) WM. A. CALVIN,

*International President,  
International Brotherhood of  
Boilermakers, Iron Ship  
Builders, Blacksmiths,  
Forgers and Helpers*

(Signed) J. H. LYONS,

*General President,  
International Association of  
Bridge, Structural and  
Ornamental Iron Workers*

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**Asbestos Workers—Bricklayers  
Boiler Wall Construction**

**January 28, 1964**

**AGREEMENT BETWEEN THE INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS AND THE BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA.**

(1) This agreement covers the installation and application of all insulating materials on boiler wall construction.

(2) In the application of insulating materials over the boiler walls after same is completed, when said insulation is applied in one continuous operation and not in conjunction with the refractory material, this is the work of members of the International Association of Heat and Frost Insulators and Asbestos Workers.

(3) In cases where the insulation on the outside of the boiler walls is applied in conjunction with refractory materials as it progresses (scaffold high), said insulation is the work of members of the Bricklayers, Masons and Plasterers' International Union of America.

(4) In the event that a dispute over the application of this agreement cannot be settled locally, there shall be no stoppage of work, and the dispute

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shall be referred to the headquarters of both International Unions for settlement.

International Association of Heat  
and Frost Insulators and Asbestos  
Workers:

(Signed) JOSEPH A. MULLANEY.  
HUGH E. MULLIGAN.  
C. W. SICKLES.

Bricklayers, Masons and Plasterers'  
International Union of America:

(Signed) HARRY C. BATES.  
JOHN J. MURPHY.  
THOMAS F. MURPHY.  
A. J. CLELAND.

Attested:

JOHN T. DUNLOP, Chairman,  
National Joint Board for Settlement  
of Jurisdictional Disputes.

February 2, 1954.

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## DECISIONS OF A. F. OF L.

### DECISION OF AMERICAN FEDERATION OF LABOR IN RE ISSUANCE OF CHAR- TER TO ELEVATOR CONSTRUCTORS' INTERNATIONAL UNION.

WASHINGTON, D. C., May 9, 1904.

Mr. HENRY SNOW, *Gen. Secy.-Treas.*  
International Union of Elevator Constructors,  
40 Park Avenue, Chicago, Ill.

Dear Sir and Brother:

Today, Brothers Feeney and Havenstrite, of your organization, called at this office and requested a definite statement regarding matters of jurisdiction of your International Union.

Of course, you are aware that the same subject was under discussion at the Denver meeting of the Executive Council of the American Federation of Labor held last month.

Desirous of rendering the very best possible service I can to your organization, consistent with the rights to which all other organizations are entitled I therefore beg to say that at the time when your organization applied for charter, from the American Federation of Labor, the following claims to work were embodied in your application:

"The assembling of all elevator machinery, to wit: Hydraulic steam, electric, belt and compressed air; also assembling and building escalators, or traveling stairways; the assembling of all cars complete; putting up all guides, either of wood or iron; the setting of all tanks, whether pressure, open or pit tanks; the setting of all pumps (where pumps arrive on job in parts, they are to be assembled by

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members of this union). All electric work connected with car machinery and hoisting, including bells, annunciators and lights; all overhead work, either of wood or iron, and supports for the same when required; the setting of all templates, all indicators; all foundations, either of wood or iron, that would take the place of masonry; the assembling of all hydraulic parts in connection with elevators; all locking devices in connection with elevators; the boring, drilling and sinking of all plunger elevators; all link belt carriers, and all work in general pertaining to the erection and equipment of an elevator complete."

Prior to issuance of the charter to your organization, claims to jurisdiction were made by several organizations of some classes of work which were not allowed. Then an agreement was reached between the representatives of the International Union of Elevator Constructors and the International Brotherhood of Electrical Workers, by which your organization yielded to the electrical workers the following classes of work: "The electrical work on flashlights, electrical annunciators and lamps, and feed wires to the controller." With that reservation, and with those claims made by your organization to jurisdiction, the charter was issued by the American Federation of Labor.

Fraternally yours,

(Signed) SAMUEL GOMPERS,  
*President, American Federation of Labor.*

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## **DECISION OF THE AMERICAN FEDERATION OF LABOR IN RE JURISDICTION OF ENGINEERS.**

(Decision Norfolk, Va., Convention, American Federation of Labor, November 11-22, 1907, Resolution No. 124.)

Resolved, That hoisting and portable local unions of the International Union of Steam Engineers have jurisdiction over the motive power of all derricks, cement-mixers, hod-hoists, pumps, and other machines used on construction work and be it further

Resolved, That the Building Trades organizations be requested to give all the assistance possible to the Hoisting and Portable Locals of the I. U. S. E. in maintaining the scale of wages now paid on this work.

This shall not, however, be construed as preventing the International Brotherhood of Electrical Workers from using a hand or electric winch for the purpose of pulling wire or cable through conduits, nor the wiring and repairing of all electrical appliances.

## **DECISION OF AMERICAN FEDERATION OF LABOR ELECTRICAL WORKERS—ENGINEERS.**

(Decision Cincinnati, Ohio, Convention, American Federation of Labor, June 1922.)

That the electrical installation, electrical repairs, overhauling of general electrical apparatus in generating stations, substations and the operating of exclusively electrical-driven machines in the aforementioned plants or stations also that the operation

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of traveling or other electric cranes for shop or factory purposes shall be Electrical Workers work.

"This decision is not to interfere with the jurisdiction of the Steam and Operating Engineers over operating steam-generating plants, electric hoists in building construction or electric shovels.

"These conclusions are not intended to disturb any other conditions obtained that are mutually satisfactory at this time, or that have been provided for by past action of the American Federation of Labor which are not in conflict with this decision."

#### **DECISION OF AMERICAN FEDERATION OF LABOR IN RE DISPUTE BETWEEN TEAMSTERS AND IRON WORKERS.**

The following is a decision of jurisdiction dispute existing between the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, and the Bridge and Structural Iron Workers' International Union, rendered by an Arbitration Committee appointed by the Executive Council and adopted by the Convention of the American Federation of Labor held in Portland, Oreg., October, 1923:

"It is clearly evident that the Bridge and Structural Iron Workers' International Union has gradually and persistently encroached upon the jurisdiction of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America. It has constantly endeavored to broaden the jurisdiction by claiming, and in some instances practicing the rights to load and unload materials off and on wagons, trucks and automobiles. In the opinion of the Committee, this work clearly belongs to the International Brotherhood of Teamsters, Chauff-

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feurs, Stablemen and Helpers of America. This work was conceded to this organization through its charter of affiliation with the A. F. of L. All loading, hauling and unloading of materials on and off wagons, trucks and automobiles belong to the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America. However, where building material is hauled to buildings under construction and the foreman, contractor, or person in charge of the erection of the building, directs that it be hoisted from the wagon, truck or automobile, such hoisting shall be done by the members of the Bridge and Structural Iron Workers' International organization. Where it is loaded from the wagon, truck or automobile on the ground, street or sidewalk, such work shall be done by the members of the Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America."

#### **DECISION OF AMERICAN FEDERATION OF LABOR IN RE ERECTION OF ECON- OMIZERS.**

(Decision III Paso, Tex., Convention, American Federation of Labor, November 17-25, 1934.)

In the controversy existing between the Brotherhood of Boiler Makers and the United Association of Plumbers and Steam Fitters over the erection of economizers, the decision is that in the opinion of the Executive Council the work belongs to the United Association of Plumbers and Steam Fitters.

**United Association of Journeymen Plumbers and  
Steamfitters**

By the decisions of the American Federation of Labor, rendered at both the Atlanta and Rochester

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conventions, the substance of this action of these conventions of the American Federation of Labor was that there was only room for one organization in the pipefitting industry. And, that the United Association of Journeymen Plumbers and Steamfitters is recognized as the only organization having complete control of the pipefitting trade and industry in its entirety throughout the United States and Canada.

Following are the official decisions of the American Federation of Labor:

#### Atlanta Decision

The Atlanta Convention of the American Federation of Labor, held in Atlanta, Ga., November 13 to 25, inclusive, 1911, declared "that both for harmony and practicability the pipefitting trade should be represented in the American Federation of Labor, also in the Building Trades Department, by one general association of the pipefitting industry, namely the United Association of Plumbers, Gas Fitters, Steamfitters and Steamfitters' Helpers of the United States and Canada, and further, that the Executive Council of the Building Trades Department be requested to carry that declaration into effect." (See page 339 of the 1912 Rochester Convention proceedings.)

#### Rochester Decision

The Adjustment Committee's report to the delegates assembled at the Rochester Convention of the American Federation of Labor, held at Rochester, N. Y., November 11 to 23, inclusive, 1912, is as follows:

Your committee reports that it has considered carefully the efforts made by the Executive Coun-

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cil of the American Federation of Labor to carry out and make effective the instructions of the Atlanta Convention, which declared that both for harmony and practicability the pipefitting trade should be represented in the American Federation of Labor, also in the Building Trades Department, by one general association of the pipefitting industry, namely, the United Association of Plumbers, Gas Fitters, Steamfitters and Steamfitters' Helpers of the United States and Canada.

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**DECISIONS RENDERED BY THE NATIONAL BOARD FOR JURISDICTIONAL AWARDS IN THE BUILDING INDUSTRY.**

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**Air Coolers, Air Washers and Blowers, Consisting of the Assembling of Sheet Metal and Pipe Fitting**

**DECISION RENDERED MARCH 11, 1920**

(Subject of dispute between the Amalgamated Sheet Metal Workers' International Alliance and the United Association of Plumbers and Steamfitters.)

The following agreement between the Amalgamated Sheet Metal Workers' International Alliance and the United Association of Plumbers and Steamfitters was confirmed:

**September 9, 1918.**

The undersigned committee, appointed by the General Presidents of their respective International Organizations namely, the United Association of Plumbers, Steamfitters and Steamfitters' Helpers and the Amalgamated Sheet Metal Workers' International Alliance, held joint conferences in the City of New York, beginning September 5, 1918, in an endeavor to arrive at an agreement concerning air washers, fans, blowers, the housing of same, and the pipe fitting on same.

After lengthy meetings participated in by all of the undersigned, representing the Joint Conference Committee of both International Unions, the following has been agreed to:

**SUBJECT 1. That all sheet metal work of No. 10**

gauge, or lighter, when used in air washers, fans, blowers, or on the housing of same, shall be recognized as being the work of the members of the Amalgamated Sheet Metal Workers' International Alliance.

SEC. 2. That all pipe fitting in connection with the above first section shall be recognized as being the work of the Steamfitters, members of the United Association of Journeymen Plumbers, Steamfitters and Steamfitters' Helpers.

SEC. 3. It being thoroughly understood by all of the undersigned that all the assembling and erecting of the work as defined in Section One, shall be the work of the members of the Sheet Metal Workers' International Alliance, excepting pipe fitting of all kinds, which shall be the work of the Steamfitters and Steamfitters' Helpers of the United Association.

SEC. 4. This agreement shall become effective and in full operation for all parties concerned beginning November 1, 1918.

Signed for Sheet Metal Workers this 9th day of September, 1918:

JAMES LENNON, *Gen. Org.*  
R. PATTISON, *Chairman*,  
W. M. O'BRIEN, *Secretary*  
WM. H. LYONS,  
THOS. WALSH,  
EDW. P. O'NEIL.

Signed for United Association:

E. W. LEONARD, *Gen. Org.*  
CHARLES M. RAU,  
RICHARD P. WALSH,  
A. P. JOHNSON,  
LEO A. MURPHY.

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### **Low Pressure Heat**

(Subject of dispute between the United Association of Plumbers and Steamfitters and the International Union of Steam Engineers in the Matter of maintaining temporary heat while structure is in course of construction.)

#### **DECISION RENDERED MARCH 11, 1920**

In the matter of the controversy between the engineer and steamfitter on the question of low pressure heat during completion of the heating system jurisdiction shall rest with the steamfitters until the initial test is completed, immediately after which time, whenever necessary to maintain heat, a stationary engineer shall be employed either by the contractor or the owner.

### **Low Pressure Heat (Rehearing)**

(Subject of dispute between International Union of Steam Engineers and United Association of Journeymen Plumbers and Steamfitters.)

#### **DECISION RENDERED AUGUST 2, 1923**

In the matter of the controversy between the engineers and steamfitters on the question of low pressure heat during the completion of the heating system while the building is under construction, jurisdiction shall rest with the steamfitters until the general test has been made and the work accepted by the owner or his agent.

### **Pipe Raining or Guards for Enclosures, Stairways, Hatches, etc.**

(Subject of dispute between the Bridge and Structural Iron Workers' International Association and the United Association of Plumbers and Steamfitters. Claimed by the Iron Workers entirely except when not used as a conduit for fluids or vapors claimed by Plumbers and Steamfitters when of standard-sized cut and threaded pipe.)

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**DECISION RENDERED MARCH 11, 1920**

Pipe railing consisting of standard-sized cut and threaded pipe, not used in connection with structural or ornamental iron work, is awarded to Plumbers and Steamfitters.

**INTERPRETATION RENDERED SEPTEMBER 15, 1920**

"Iron pipe railing consisting of a preponderance of slip-joints made rigid with or without set-screws, pinions or rivets, supported by a threaded joint and flange at base or walls, is the work of the Iron Workers. Where, however, the preponderance of joints is of standard-sized cut and threaded iron pipe, it belongs to the Plumbers and Steamfitters."

**Re-enforced Concrete, Cement and Floor  
Construction**

(Subject of dispute between the Bridge and Structural Iron Workers' International Association and the Wood, Wire and Metal Lathers' International Union.)

**DECISION RENDERED MARCH 11, 1920**

In the matter of the controversy between the Iron Workers and Lathers over re-enforced concrete construction, it is decided that all iron and steel used for re-enforcement in re-enforced concrete, cement and floor construction be awarded to the Iron Workers.

In such cities and localities as are covered by existing agreements with employers awarding Lathers control over re-enforced concrete construction, these agreements are to be maintained inviolate until the date of their expiration, after which this decision shall prevail.

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**INTERPRETATION RENDERED DECEMBER 4, 1920**

In the interpretation of this Board's decision of March 11, 1920, in the matter of the controversy between the Iron Workers and Lathers over reinforced concrete construction, it is not to be understood as abrogating, setting aside or in any way altering the decision of the Rochester Convention of the Building Trades Department, November 29, 1912, awarding jurisdiction over Hy-rib Lath to the Lathers, and it is to be understood that the placing of Hy-rib Lath or any ribbed metal lath, however it may be used, comes within the jurisdiction of the Lathers.

**Vitrolite and Similar Opaque Glass**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the Brotherhood of Painters, Decorators and Paperhangers.)

**DECISION RENDERED MARCH 11, 1920**

That in the matter of the controversy between the Painters and Bricklayers on the subject herewith referred to, jurisdiction over the setting of vitrolite and similar opaque glass is awarded to the Bricklayers.

**Vitrolite and Similar Opaque Glass (Rehearing)**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the Brotherhood of Painters, Decorators and Paperhangers.)

**DECISION RENDERED MAY 26, 1924**

It is the opinion of the Board that the foregoing decision of March 11, 1920, is intended to convey to the Bricklayers all counters and lavatories constructed of vitrolite or carrara glass and such glass when used in mural decorations on buildings in

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place of marble or other stone or used in conjunction with marble or other stone as panels on counters.

It is the further opinion of the Board that the foregoing decision is intended to convey all vitrolite, opalite, white opal and other opaque glass installed on false work, furring strips, walls, ceilings, partitions or columns, secured with screw rosettes, molding, putty, expansion, toggle bolts or screws, to the Painters.

The agreement of December 5, 1910, which was concurred in by the Board of Awards on July 12, 1922, remains in effect, and any disputes that may arise in connection with the subject of the agreement with the Board's decisions shall be adjusted in accordance with the provisions contained in Sections 3 and 4 of the agreement.

#### **Asbestos Plaster for Boiler Rooms, etc.**

(Subject of dispute between the Operative Plasterers and Cement Finishers' International Association and the International Association of Heat and Frost Insulators and Asbestos Workers.)

#### **DECISION RENDERED APRIL 28, 1920**

In the dispute between the Asbestos Workers and Plasterers on the matter of plastering boiler rooms, etc., it is decided that the insulation and finishing coat on ceilings with asbestos and other insulating material, where the groundwork has been prepared and installed by the Asbestos Workers, shall, including the application of insulating material on boilers, tanks, vats, etc., be awarded to the Asbestos Worker.

#### **Light Iron Furring, Brackets, Clips, Hangers, Corner Guards, Beads and Metallic Lath**

(Subject of dispute between the International Union of Wood, Wire and Metal Lathers and the International Association of

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Bridge and Structural Iron Workers.)  
(Award of the Denver Convention, Building Trades Department, A. F. of L., adopted November, 1908. See printed proceedings, Pages 69 to 71, inclusive.)

#### DECISION RENDERED APRIL 28, 1920

In the matter of dispute between the International Union of Wood, Wire and Metal Lathers and the International Association of Bridge and Structural Iron Workers referred to in the foregoing title, the following award is concurred in:

"After going into an extended hearing of the jurisdiction claims of both organizations, your committee recommends that the erection and installation of all light iron work, such as light iron furring, brackets, clips, hangers, steel corner guards or beads,\* and metallic lathing of all descriptions belong solely to the Lathers.

"This does not give the right, however, to the Lathers to install or erect any other iron work than as herein specified and outlined.

"This decision is based in conformity with the agreement entered into by the national officers of both organizations and endorsed by the Kansas City Convention of Structural Iron Workers and concurred in by the American Federation of Labor."

#### Hy-Rib Lath

In supplement of the foregoing decision the Rochester Convention of the Building Trades Department, November 29, 1912, awarded jurisdiction over Hy-rib Lath to the Lathers.

(Note interpretation rendered December 4, 1920. Re-enforced Concrete, Cement and Floor Construction.)

\* Note the following decision

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### **Metallic Corner Beads When Set in Plastic Material**

(Subject of dispute between the Operative Plasterers and Cement Finishers' International Association and the Wood, Wire and Metal Lathers' International Union.)

#### **DECISION RENDERED MARCH 11, 1920**

In the matter of the controversy between the Plasterers and Lathers on the question of the adherence of corner beads by plastic material, it is the opinion of the Board that deserved consideration was not given the subject when the previous decision was reached. It is therefore agreed that the Plasterers are awarded jurisdiction over sticking with plastic material metallic corner beads.

### **Acetylene and Electric Welding**

(Subject of dispute between the trades named in the following memorandum.)

#### **DECISION RENDERED APRIL 28, 1920**

In the matter of the dispute referred to in the foregoing title, as approved by the Philadelphia Convention of the Building Trades Department, A. F. of L., November, 1914 (see printed proceedings, Page 99), the following agreement is concurred in:

"Representatives of the Electrical Workers, Sheet Metal Workers, Iron Workers, Plumbers and Steamfitters, and Machinists mutually agreed to the following decision:

"Each trade to have jurisdiction over all acetylene and electric welding when such process is used to perform the work of their respective trades."

### **Bronzing and Painting of Radiators and Pipe Connections**

(Subject of dispute between the Brotherhood of Painters, Decorators and Paperhangers and the United Association of Plumbers and Steamfitters.)

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(Award of Rochester Convention, Building Trades Department, A. F. of L., adopted November 29, 1912. See Page 141, printed proceedings.)

**DECISION RENDERED APRIL 28, 1920**

In the matter of the subject referred to in the foregoing title, the following award is concurred in:

Resolved, That the United Association of Plumbers and Steamfitters be and is instructed to require that its affiliated unions desist from further trespass upon the jurisdiction of the Brotherhood of Painters, Decorators and Paperhangers of America, and when and where necessary to notify their employers that neither journeymen nor helpers will be permitted to do this work.

**Application of Damp-Resisting Preparations and Waterproofing**

(Subject of dispute between United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association and the Brotherhood of Painters, Decorators and Paperhangers.)

**DECISION RENDERED APRIL 28, 1920**

In the matter of dispute referred to in the foregoing title, the following agreement is concurred in:

Agreement entered into by and between the Brotherhood of Painters, Decorators and Paperhangers of America and the United Slate Tile and Composition Roofers, Damp and Waterproof Workers' Association.

First. That the Painters do not claim the right to apply any of the material claimed by the Slate, Tile and Composition Roofers, Damp and Waterproof Workers, except such material as is applied by a brush that is ordinarily used by the Painters in applying the materials covered in their jurisdiction.

Second. That the Slate, Tile and Composition Roofers, Damp and Waterproof Workers do not claim the right to apply any of the material in dispute except when applied by or with a three-knot, long-handled brush, mop or swab, and spray system employed therein.

### **Erection of Scaffolds as Applied to Building Construction**

(Subject of dispute between the International Hod Carriers' Building and Common Laborers' Union, United Brotherhood of Carpenters and Joiners, Operative Plasterers and Cement Finishers' International Association and Bricklayers, Masons and Plasterers' International Union.)

**DECISION RENDERED APRIL 28, 1920**

In the matter of the dispute between the Laborers, Bricklayers, Plasterers and Carpenters over the erection of scaffolds as applied to building construction, it is agreed that the erection and removal of all scaffolds, including trestles and horses used primarily by Lathers, Plasterers, Bricklayers and Masons, shall be done by the mechanics and laborers in these trades as directed by the employer.

Self-supporting scaffolds over fourteen feet in height or any special designed scaffolds or those built for special purposes shall be built by the Carpenters.

The making of horses and trestles other than temporary is the work of the Carpenter.

### **Marble and Slate Partitions, Backs and Floor Slabs for Urinal Stalls, Closets, and Showers, Setting of**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the United Association of Plumbers and Steamfitters.)

(Award of Rochester Convention, Building Trades Department.

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A. F. of L. adopted November 28, 1912. See Page 132, printed proceedings. Award of Buffalo Convention, November 9, 1917. See Page 92, printed proceedings.)

#### DECISION RENDERED APRIL 28, 1920

In the matter of the subject referred to in the foregoing title, the following award is concurred in:

Resolved, That the setting of floor slabs, backs, partitions of urinal stalls, closets and shower baths properly belong to the Bricklayers.

The foregoing decision does not concede to the Bricklayers the right to install marble work that is connected with the water supply or sewer or water-tight work regularly catalogued as plumbing fixtures.

#### Muslin and Canvas for Decorative Purposes, Tacking of

(Subject of dispute between the Brotherhood of Painters, Decorators and Paperhangers and the I. A. Heat and Frost Insulators and Asbestos Workers.)

(Award of Buffalo Convention, Building Trades Department, A. F. of L., adopted November 10, 1917. See Page 103, printed proceedings.)

#### DECISION RENDERED APRIL 28, 1920

In the matter of the subject referred to in the foregoing title, the following award is concurred in:

Resolved, That this convention notify and instruct the officers of the Asbestos Workers' International Union that the tacking of all muslin and canvas for decorative purposes is the jurisdiction of the Painters and that they instruct their members to refrain from doing any of this work.

#### Pile Driving Machinery and Engines, Operation of

(Award of Buffalo Convention, Building Trades Department, A. F. of L., adopted November, 1917. See Pages 99 and 105, printed proceedings.)

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**DECISION RENDERED APRIL 28, 1920**

In the matter of the subject referred to in the foregoing title, the following award is concurred in:

Such workmen as are employed in the operation of engines or machinery in connection with a pile driver come under the jurisdiction of the Engineers.

**Sheet Metal Glazing for Sash, Frames, Doors, Skylights, etc.**

(Subject of dispute between the Brotherhood of Painters, Decorators and Paperhangers and Sheet Metal Workers' International Association.)

**DECISION RENDERED APRIL 28, 1920**

In the matter of the dispute referred to in the foregoing title, the following agreement is concurred in:

Agreement entered into by and between the General Executive Board of the Brotherhood of Painters, Decorators and Paperhangers of America, and the Sheet Metal Workers' International Association shall take effect December 1, 1910, and remain in force until amended, revised or changed at a meeting between the representatives of both organizations called for this purpose.

**SECTION 1.** It is agreed by both parties to this agreement that all glass set in sheet metal sash, frames, doors, or skylights, shall be set by Painters, according to their claim of jurisdiction granted by the convention of the Building Trades Department, A. F. of L., at St. Louis, December, 1910; and that all sheet metal work on sheet metal sash, frames, doors, or skylights shall be done by Sheet Metal Workers.

**SEC. 2.** In localities where differences now exist or may arise in the future, such differences shall be

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adjusted by a committee appointed by and representing the district councils or local unions of both organizations in that locality. Should this committee be unable to agree, a representative of the General Executive Board of each organization shall be called in to assist in the adjustment.

SEC. 3. It is also agreed that the national officers of both organizations where local unions fail to agree shall insist that this agreement be carried out by affiliated unions.

### **Slate Treads When Set on Iron Stair Case**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the International Association of Bridge and Structural Iron Workers.)

In the matter of the subject referred to in the foregoing title, the following award is concurred in:

**DECISION RENDERED APRIL 28, 1920**

Slate treads on iron stairs having provoked a dispute in jurisdiction between the organizations above named, was submitted to the Executive Council, November 20, 1909. The action taken follows:

The Executive Council of the Building Trades Department, on being called upon for a decision, awarded the work in question (slate treads) to the Bricklayers.

### **Unskilled Labor, with Special Reference to the Loading and Unloading of Material as Applied to Re-enforced Concrete Construction**

(Subject of dispute between the International Red Carriers, Building and Common Laborers' Union and International Association of Bridge and Structural Iron Workers.)

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**DECISION RENDERED AUGUST 2, 1920**

**AMENDED DECEMBER 11, 1924**

It is the decision of the Board that the loading and unloading, carrying and handling of all rods and materials for use in re-enforcing concrete construction shall be done by laborers under the supervision of such persons as the employer may designate. The hoisting of rods shall be done by laborers, except when a derrick or outrigger operated by other than hand-power is used. This decision applies only to the character of work stipulated herein. In such localities where existing agreements provide otherwise, this decision is to become effective at the expiration thereof.

**Defects in Concrete Caused by Leakage, Bulging, Sagging, etc., Through Defective or Shifting Forms**

(Subject of dispute between the Operative Plasterers and Cement Finishers' International Association and the International Hod Carriers, Building and Common Laborers' Union.)

**DECISION RENDERED AUGUST 2, 1920**

When finishing tools are not used or required, the work shall be done by the laborer.

The filling of voids and other work requiring patching, where finishing tools are used and required, shall be done by the cement finisher.

**Setting and Alignment of Tile and Porcelain Bathroom Accessories**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the United Association of Plumbers and Pipefitters.)

**DECISION RENDERED DECEMBER 4, 1920**

In the matter of controversy between the Tile

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**Layers and Plumbers over setting and Alignment of Tile and Porcelain Bathroom Accessories, it is decided that all bath and toilet room accessories made of clay products, built-in tile-faced walls, shall be the work of the tile setter.**

**Anchors for Bathroom Accessories**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the United Association of Plumbers and Steamfitters.)

**DECISION RENDERED NOVEMBER 14, 1923**

All bathroom accessories, except those covered by decision rendered December 4, 1920, placed after finished tile wall surfaces are completed, shall be set by Plumbers and Steamfitters. When anchors for bathroom accessories are built into finished tile wall construction, the setting of same shall be done by Bricklayers and Masons and when any such anchors are placed after finished tile wall surfaces are completed, the work shall be done by Plumbers and Steamfitters.

**Jurisdiction Over Foremen on Interior Concrete Columns, Foundations for Engine and Machinery Beds**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union, International Hod Carriers, Building and Common Laborers' Union and the Operative Plasterers and Cement Finishers' International Association.)

**DECISION RENDERED DECEMBER 4, 1920**

In the matter of the jurisdiction over Foremen on Interior Concrete Columns, Foundations for Engine and Machinery Beds as contested by the Bricklayers, Hod Carriers and Plasterers, it is the decision of the Board that the work shall be done by the Laborers under the supervision of such skilled workmen as the employer may designate.

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### **Electrical Work on Elevators (Rehearing)**

(Subject of dispute between the International Brotherhood of Electrical Workers and the International Union of Elevator Constructors.)

**DECISION RENDERED DECEMBER 4, 1920  
REVISED AND AMENDED FEBRUARY 2, 1927**

In the matter of dispute between the Elevator Constructors and the Electrical Workers on the question of all electrical work on elevators, it is agreed that the electrical work involved in the installation of signal systems, fans, telephones, electric light fixtures, illuminated thresholds and feed wires to the controller on all elevators is the work of the Electrical Workers; also the electrical work in connection with interlocking devices on other than automatic elevators is awarded to the Electrical Workers.

The term "automatic elevator," as used in this award, includes the full automatic, double push-button single control and department store control elevators.

### **Bishopric Board, When Applied as a Substitute for Lath and Sheathing**

(Subject of dispute between the United Brotherhood of Carpenters and Joiners and the International Union of Wood, Wire and Metal Lathers.)

**DECISION RENDERED DECEMBER 4, 1920**

In the matter of the dispute over the installation of Bishopric Board when applied as a substitute for lath, it is the decision of the Board that the work shall be done by the Lathers; where the same is used for sheathing it shall be the work of the Carpenters.

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### **Flaxlinum Keyboard Insulation**

(Subject of dispute between the United Brotherhood of Carpenters and Joiners and the International Union of Wood, Wire and Metal Lathers.)

**DECISION RENDERED DECEMBER 4, 1920**

In the matter of the dispute over the installation of Flaxlinum Keyboard and Insulation, it is the decision of the Board that when the same is used as a substitute for lath or when any plastic material is to be applied, the work shall be done by the Lathers; when Flaxlinum is used as insulation or sheathing it shall be the work of the Carpenters.

### **Installation of Metal Windows**

(Subject of dispute between the Sheet Metal Workers' International Association and the International Association of Bridge and Structural Iron Workers.)

**DECISION RENDERED MAY 5, 1926**

The installation of metal windows having cast-iron sills and cast-iron head blocks or in which three or more of the structural parts—that is, the sills, heads, jambs and mullions—are heavier than ten-gauge, shall be the work of the Iron Workers; otherwise it shall be the work of the Sheet Metal Workers.

### **Hoisting, Lowering and Placing of Elevator Machinery**

(Subject of dispute between the Elevator Constructors' International Union and the International Association of Bridge and Structural Iron Workers.)

**DECISION RENDERED FEBRUARY 7, 1922**

In the matter of the dispute between the Elevator Constructors and Bridge and Structural Iron Workers referred to in the foregoing title, it is decided

that the Elevator Constructors be awarded the hoisting, lowering and placing of elevator machinery.

### Glazing as Hereinafter Described

(Agreement for avoidance of dispute between Brotherhood of Painters, Decorators and Paperhangers and Bricklayers, Masons and Plasterers' International Union as endorsed by Building Trades Department, A. F. of L.)

### DECISION RENDERED JULY 12, 1922

In the matter of the subject referred to in the foregoing title, it is the decision of the Board that the following agreement be concurred in:

Agreement entered into by and between the General Executive Board of the Brotherhood of Painters, Decorators and Paperhangers of America, and the General Executive Board of the Bricklayers, Masons and Plasterers' International Union shall take effect December 5, 1910 and remain in force until amended, revised or changed at a meeting between the representatives of both organizations called for this purpose.

SECTION 1. It is agreed by both parties to this agreement that all plate and window glass, mirrors, beveled plate, rough, ribbed, wire, figured, colored, or art glass set in sash, frames, doors or skylights constructed of wood, sheet metal, iron, stone, or other material and set with putty or moulding, shall be set by Painters, and that where glass is used as a substitute for ceramic, mosaic, or encaustic tile, and set on floors, walls and ceilings in mortar, cement or other plastic material used to secure such tile in position, shall be set by Bricklayers when cut to size and shape for setting. It is further agreed by the Bricklayers that all glass delivered on jobs in stock sheets shall be cut to the required size by the painters.

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**SEC. 2.** It is agreed by both parties to this agreement that all plate and window glass, mirrors, beveled plate, rough, ribbed, wire, figured, colored, or art glass set in sash, frames, doors or skylights constructed of wood, sheet metal, iron, stone or other material and set with putty or moulding, shall be set by the Painters, and that where glass is used as a substitute for marble in interior finish or decoration, and is carved, cut, polished or rubbed, shall be set by the Bricklayers.

**SEC. 3.** Should any differences arise regarding the work as covered by this agreement, a committee appointed by and representing the district council or local union of each organization in that locality, shall meet and adjust such differences. Should the committees of the local unions fail to agree, an executive officer of each international union shall be requested to attend and assist in the adjustment.

**SEC. 4.** It is further agreed that the national officers of both organizations shall insist that all agreements entered into shall be carried out by affiliated unions.

#### **Operation of Elevators for Hoisting Materials**

(Decision of St. Louis Convention, Building Trades Department, A. F. of L., adopted December, 1916. See printed proceedings, Page 123.)

#### **DECISION RENDERED JULY 12, 1922**

In the matter of the subject referred to in the foregoing title, the following decision is concurred in:

The operation of elevators of all kinds when used for hoisting any material used in the construction of buildings is hereby conceded to the Hoisting En-

gineers affiliated with the International Union of Steam Engineers.

### **Corrugated Sheeting**

(Subject of dispute between International Association of Bridge and Structural Iron Workers and Sheet Metal Workers' International Association.)

#### **DECISION RENDERED MAY 26, 1923**

The erection of corrugated metal sheeting on steel frames construction when the sheets are simply end and side lapped is the work of the Iron Workers; the erection of all other corrugated metal sheeting of No. 10 gauge or lighter is the work of the Sheet Metal Workers.

### **Derricks, Erection and Handling for Setting Stone**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and International Association of Bridge and Structural Iron Workers.)

#### **DECISION RENDERED MAY 26, 1923**

The stonemaker shall have sole jurisdiction over hand derricks in connection with the setting of stone.

The erection and operation of power derricks for setting stone shall be done by the Iron Workers, under the direct supervision of the stone setter, who shall determine the number of men to be employed.

### **Artificial Stone—Granite (Dressing, Altering and Finishing)**

(Subject of dispute between Granite Cutters' International Association and Journeymen Stone Cutters' Association.)

#### **DECISION RENDERED MAY 26, 1923**

In the matter of dispute between the Granite Cutters' International Association and the Journey-

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men Stone Cutters' Association relative to artificial stone, the dressing, altering and finishing of artificial stone, cast in imitation of natural stone, is the work of the Stone Cutters, except that when any such artificial stone, by reason of hardness of texture requires the use of granite cutters' tools for the proper dressing, altering or finishing, it is the work of the Granite Cutters.

#### **Flat-face Tile**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association)

#### **DECISION RENDERED MAY 26, 1923**

In the matter of dispute referred to in the foregoing title, the following agreement is concurred in:  
**Bricklayers, Masons and Plasterers' International Union**

**vs.**

**United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association**

Agreement entered into this 21st day of February, 1911, amended May 26, 1923, by and between duly accredited representatives of the organizations above named, to-wit:

Jurisdiction is hereby conceded the Bricklayers over the laying or setting of flat-faced tile of every description when laid in mortar on all flat roofs or promenade roofs.

Jurisdiction is hereby conceded the Slate, Tile and Composition Roofers, Damp and Waterproof Workers over flat-faced tile of every description, and corrugated tile, when laid in any preparation of asphalt on roofs, flat or otherwise.

### **Foremanship Over Concrete Construction**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union, International Hod Carriers' Building and Common Laborers' Union and Operative Plasterers and Cement Finishers' International Association.)

**DECISION RENDERED MAY 26, 1923**

**AMENDED FEBRUARY 21, 1924**

**REVISED DECEMBER 11, 1924**

In the matter of dispute over concrete construction, it is decided the work shall be done by laborers under the supervision of such skilled mechanic as the employer may designate.

### **Conduo Base, Installation of**

(Subject of dispute between International Brotherhood of Electrical Workers and Sheet Metal Workers' International Association.)

**DECISION RENDERED AUGUST 2, 1923**

In the matter of the controversy between the Electrical Workers and the Sheet Metal Workers as to the installation of conduo base, it is decided that the installation of conduo base is the work of the Sheet Metal Workers.

### **Setting of Alberene Stone Slabs Used as Drain Boards or Backs in Connection with Sinks**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the United Association of Plumbers and Steamfitters.)

**DECISION RENDERED NOVEMBER 14, 1923**

In the matter of the controversy between the Bricklayers and Masons and the Plumbers and Steam Fitters over the Setting of Alberene Stone Slabs used as Drain Boards or Backs in Connection



with Sinks, it was decided that the setting of Alberene stone slabs used as drain boards or backs in connection with sinks is the work of Plumbers and Steamfitters.

### **Gunnite Work or Handling of Cement Gun**

(Subject of dispute between the International Hod Carriers, Building and Common Laborers' Union, Operative Plasterers and Cement Finishers' International Association and Bricklayers, Masons and Plasterers' International Union.)

### **DECISION RENDERED FEBRUARY 21, 1924**

In the matter of the dispute referred to in the foregoing title, the following decision was reached:

When work to be performed is to be of the thickness of one and one-half inches or greater, the handling of the cement gun shall be done by the Laborers. When the work is less than one and one-half inches in thickness, the handling and control of the nozzle shall be the work of the Plasterers and Cement Finishers.

It is understood that this decision does not allow the Laborers the right to finish where any finishing tools are required.

The application of a coat of cement mixture by means of the cement gun on steel, as a protection against corrosion is not included in this decision.

### **Plastering Work for Preparation of Walls and Ceilings for Tiling**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the Operative Plasterers and Cement Finishers' International Association.)

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**DECISION RENDERED FEBRUARY 21, 1924**

After reviewing the controversy in its various phases, the determination is reached that the agreement previously existing between the two organizations affords the most practical plan of adjustment, and the following award is therefore made as the decision of the Board:

Plasterers shall prepare or plaster all walls and ceilings which are to receive tile, except the final setting bed, which shall be applied by the Tile Layers; the bath rooms, vestibule and small halls in single private residences shall be plastered by the Tile Setters.

**Concrete Slab Re-enforced (Pre-Cast) for  
Roof Tiling**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association.)

**DECISION RENDERED DECEMBER 11, 1924**

Jurisdiction is awarded Slate, Tile and Composition Roofers, over pre-cast re-enforced concrete slabs for roof tiling when pointed up with or laid upon any preparation of asphalt, roofing cements or other mastics, on roofs, flat or otherwise.

When laid in cement, lime or gypsum mortars, the work is awarded to Bricklayers.

**Installation of Air Piping in Connection with  
Elevator Door Locks**

(Subject of dispute between the United Association of Plumbers and Steamfitters and the International Union of Elevator Constructors.)

**DECISION RENDERED NOVEMBER 11, 1925**

When the compressor is used only for elevator work, the work from the water main to the com-

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pressor and return shall be the work of the plumbers and steamfitters. The elevator constructor shall set the compressor and do all the work between the compressor and the locking device, but when the compressor is used for other purposes than elevator work, then the compressor shall be set by the plumbers and steamfitters, and the elevator constructor shall do the necessary piping from the compressor to his work only, all other work to be done by the plumbers and steamfitters.

#### **Setting, Installing or Sticking of Artificial Stone**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and Operative Plasterers and Cement Finishers' International Association.)

**DECISION RENDERED MAY 5, 1926**

It is decided that the setting, installing or sticking of artificial stone, the material base of which is gypsum, plaster of Paris or Keene cement, resembling plaster in character and density, wherever used on the interior of building, whether or not reinforced with burlap or other fibrous material, regardless of color, or whether or not faced with any special cement, whether pre-cast or run in place, is the work of the Plasterers.

Wherever artificial stone, the material base of which is of other cements, which comes pre-cast and resembles the natural stone in character and density, regardless of color, whether or not faced with any special cement, the work is that of the Bricklayers.

#### **Cutting of Chases and Channels in Brick, Tile and other Masonry**

(Matter referred to National Board for Jurisdictional Awards by Executive Council, Building Trades Department.)

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**DECISION RENDERED MAY 5, 1926**

Inasmuch as no other trades except the Bricklayers, Plumbers and Steamfitters and Electricians have claimed this work, it is decided that the cutting of chases and channels in brick, tile and other masonry is the work of the Bricklayers, except that the Plumbers and Steamfitters and Electricians shall have jurisdiction to do cutting where required for the installation of their respective work.

**Placing of Trap Rock Floors by Terrazzo  
Methods**

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and Operative Plasterers and Cement Finishers' International Association.)

**DECISION RENDERED MAY 5, 1926**

The finishing of cement floors where additional aggregate of stone is added by spreading or sprinkling on top of the finished base and troweled or rolled into the finish and then the surface ground by grinding machines, shall be under the jurisdiction of the Terrazzo Workers. When no additional stone or aggregate is added to the finished mixture, even though the surface may be ground, the work shall be under the jurisdiction of the Cement Finishers.

**Jurisdiction Over Operation of Electric and  
Traveling Cranes During Construction  
of Building**

(Subject of dispute between the International Union of Steam and Operating Engineers and International Brotherhood of Electrical Workers.)

(Decision Executive Council, American Federation of Labor, March, 1924.)

**ADOPTED AUGUST 4, 1926**

"The Executive Council has been asked for an

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interpretation of decision rendered by the 1922 Cincinnati Convention of the American Federation of Labor, as it relates to the jurisdiction of overhead or traveling cranes installed as a permanent fixture in building while building is under construction and cranes are being used to handle building material for the construction of building and also for the setting of motors, generators and other electrical equipment.

"The decision provides that the Engineers have jurisdiction over the hoists for building material on building under construction, and that the Electrical Workers have jurisdiction over overhead or traveling cranes for shop or factory purposes. Therefore if the overhead or traveling cranes are used exclusively to handle building material for the building, cranes shall be operated during such construction by members of the Steam and Operating Engineers.

"If motors and other electrical equipment are being set in place while building is under construction and a crane or cranes are used for such setting, the Engineers shall operate the crane, handling both building material and electrical equipment until 50 per cent of the motors or electrical equipment are set, and then the Engineers shall cease to operate crane and shall turn same over to be operated by Electricians, who will operate the crane for all purposes thereafter.

"In the event of two overhead cranes being used to handle building material and electrical equipment, then one crane shall be operated by Engineer and one be operated by Electrician for all the work required of that crane, in which case each operator shall be employed until the plant is completed, when Engineer shall turn crane over to Electricians to operate."

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**DECISIONS RENDERED AND HELD TO  
BE OPERATIVE BY THE BUILDING AND  
CONSTRUCTION TRADES DEPART-  
MENT.**

**Jurisdiction Over Spot Grounds**

**DECISION BALTIMORE CONVENTION, 1916**

All ground work, continuous or of spot character, for the purpose of receiving trim, shall be done by the Carpenter; all spot ground work, when applied solely for the guidance of plastering work, shall be done by the Plasterer.

**Plaster Boards or Substitute Materials Therefore**

**JULY 25, 1919**

The erection or construction of plaster board ceilings or partitions which are to receive plaster is the work of the Lather. This form of construction is fundamentally and primarily a lathing feature, as is wire lath attached to light iron furring. The studs or runners used in this form of construction are in principle similar to light iron furring as conceded to the Lather.

**Setting of Screeds in Cement Construction and  
Form Work**

**MARCH 17, 1920**

The decision is that setting screeds in connection with the finishing of cement floors is conceded as Cement Finishers work.

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### **Setting Electrical Motors**

**AUGUST 14, 1920**

Handling, setting and adjusting of motors and connecting of power thereto is work of Electrical Workers. Fastening of motors direct to motor-driven machinery is work of Millwrights.

### **Boilers, Moving, Handling and Placing**

**OCTOBER 8, 1923**

Work in question being vital part of Steam Fitters equipment is therefore the work of the Steam Fitter.

### **Holorib Deck Roofing**

**JANUARY 26, 1923**

Have received the sample of Holorib deck roofing. This material being less than ten gauge, therefore, under the rulings of this Department, the Sheet Metal Workers have jurisdiction.

### **Steelx Re-enforcement**

**AUGUST 9, 1929**

Welded wire mesh steelx used primarily for re-enforcing is the work of the iron worker. Paper back steelx which performs the same function and is used for the same purpose as hy-rib is the work of the Lather.

### **Bush Hammering of Concrete Base Foundation**

**SEPTEMBER 23, 1930**

The bush hammering of concrete comes within the jurisdiction of the Cement Finishers.

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## **Teamster-Engineer Decision**

**OCTOBER 27, 1939**

(Decision rendered by subcommittee of the Executive Council of the Building and Construction Trades Department, A. F. of L., and approved by the 34th Annual Convention of the Department, New Orleans, La., November, 1940.)

For a complete report of subcommittee see pages 138 to 143, inclusive, of the Proceedings of the 34th Annual Convention.

### **DECISION**

All power-driven equipment that is used exclusively as a vehicle to transport any material or other matter for building or other construction work comes within the jurisdiction of the Teamsters and Chauffeurs.

All power-driven equipment used on any and all types of building and other construction work, including any and all power-driven equipment that has been in dispute between the Teamsters and Engineers, comes within the jurisdiction of the International Union of Operating Engineers.

**WM. L. HUTCHESON, *Chairman.***

**R. J. GRAY, *Secretary.***

**D. W. TRACY.**

**January 29, 1940.**

**The Executive Council,  
Building and Construction Trades Department,  
American Federation of Labor.**

Your committee appointed to handle the matter of the dispute between the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers and the International Union of Operating



Engineers received a request from President Tobin of the Teamsters for a clarification of the decision.

President Hutcheson, President Tracy and Mr. Gray met with Messrs. Tobin, Gillespie and Farrell on Sunday evening, January 28, and the Teamsters requested information on the following:

1. On agreements on the Pacific coast, west of the Rocky Mountains, which he claimed it would be impossible for him to immediately abrogate without considerable difficulty.

2. The matter of operation of what is known as trac-trucks which are used exclusively for the transportation of materials.

3. The questions of the members of Teamster Unions who had been employed as Chauffeurs on what is known as a crane mounted on a truck chassis which is used exclusively in the New York metropolitan area.

The conference adjourned after it was agreed that your committee would confer with the representatives of the Engineers on Monday, January 29.

At the conference with the Engineers the following were present: John Possehl, Brothers Fay, Maloney and Stuhr. President Possehl agreed that he would not call for immediate operation of the decision that would affect any existing agreements on the Pacific coast, west of the Rocky Mountains. However, he expressly stated that this would not apply to any agreements that may have been made after the decision of the committee had been rendered.

On question number two—on the operation of trac-trucks used exclusively to transport mate-

rials—the Engineers agreed that the operation of such trucks is the work of the Teamster.

The operation of trucks, which have a crane mounted on the truck chassis was next discussed. The Engineers agreed that they would accept any Teamster members who had been employed for any length of time in the driving of these trucks to membership in their organization. Brothers Possehl, Fay and Delaney agreed to sit down with representatives of the Teamsters as far as the metropolitan area of New York was concerned and adjust the matter in a peaceful manner locally.

WM. L. HUTCHESON,

D. W. TRACY,

R. J. GRAY.

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**DECISIONS RENDERED BY DR. JOHN A. LAPP, NATIONAL REFEREE FOR THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT, A. F. OF L.**

**Setting Wall Bearing Steel Bar Joists**

**DECISION RENDERED APRIL 23, 1937**

"The work of setting wall bearing steel bar joists comes under the jurisdiction of the International Association of Bridge Structural and Ornamental Iron Workers."

**Erection of Economizers**

**DECISION RENDERED SEPTEMBER 20, 1937**

"The decision of the Joint Conference Board of Chicago is affirmed and the decision of the Executive Council of the American Federation of Labor is held to be in force. That decision reads as follows:

"In the controversy existing between the Brotherhood of Boiler Makers and the United Association of Plumbers and Steam Fitters over the erection of economizers, the decision is that in the opinion of the Executive Council the work belongs to the United Association of Plumbers and Steam Fitters."

**Jurisdiction Over Lock Gates and Flood Gates**

**DECISION RENDERED OCTOBER 21, 1937**

"The decision of President Williams is affirmed. The subject-matter of lock gates and flood gates is not covered by the agreement between the Boiler Makers and Iron Workers and the dispute

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in question is subject to arbitration section of the agreement as follows:

"Section 7. Any further disputes that may arise between the parties of this agreement shall be first considered by the respective General Presidents. Upon their failure to agree, the question shall be submitted to arbitration. None of the work definitely decided upon in this agreement shall be subject to further arbitration."

**Jurisdiction Over Operation of Electric Generators for Welding Purposes**

**DECISION RENDERED OCTOBER 26, 1937**

The Decision of the Referee is that the binding national decisions of the American Federation of Labor, the Building and Construction Trades Department of the American Federation of Labor and the National Board of Jurisdictional Awards cover the operation of electrical welding apparatus and that such operation is incident to the trade doing the welding. The decision of the Newark Committee on Jurisdictional Disputes is overruled and the jurisdictional right to operate electric welding sets is held to be, by existing decisions, within the jurisdiction of the trade doing the welding.

**Pointing and Caulking of Steel Window Frames When Incased in Brick Walls**

**DECISION RENDERED NOVEMBER 18, 1937**

The decision of the St. Joseph, Mo., Joint Arbitration Board awarding jurisdiction over the pointing and caulking of steel window frames, when encased in brick walls, to the International Association of Bridge and Structural Iron Workers is reversed and such work, when done with

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mortar or plastic materials of any kind is held to be within the jurisdiction of the Bricklayers, Masons and Plasterers' International Union of America.

**Decision of the Referee on the Interpretation of the Agreements Between the Bricklayers, Masons and Plasterers' International Union of America and the Operative Plasterers and Cement Finishers' International Union of America Relating to Artificial Stone and Marble and Acoustical Tile.**

DECEMBER 20, 1937

The Referee decides that the installation of the material in question on the Library of Congress Annex comes under the 1929 agreement and is, therefore, under the terms of the agreement, within the jurisdiction of the Bricklayers, Masons and Plasterers' International Union of America. The material is in no real sense, except in its acoustical properties, similar to the acoustical tile which was the subject of the 1930 agreement. There may be border line cases between the two types of material covered in the agreements of 1929 and 1930 but this material is not one of them. It is clearly on the side of artificial stone, rather than on the side of materials similar to acoustical tile or, particularly, the U. S. Gypsum product known as Acoustone. Moreover, its installation follows the craft method used by the Bricklayers, Masons and Plasterers' International Union.

This decision applies only to the interpretation of the agreement between the Bricklayers and Operative Plasterers Unions.

(Signed) JOHN A. LAPP, *Referee*

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**Jurisdiction Over the Unloading of Ready Mixed Concrete From Certain Types of Trucks to the Ground on Building and Construction Jobs.**

**DECISION RENDERED JANUARY 17, 1938**

The Referee decides that the unloading of ready mixed concrete from trucks to a building or construction job, by means of machinery, attached to the truck, that removes the concrete from the bin of the truck, and the operation of the motor or piece of machinery used in unloading, is the work of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America.

**Decision of the Referee on the Question of Drying and Handling Sludge at the Southwest Sewage Treatment Works in Chicago.**

**MAY 2, 1938**

**THE DECISION**

The erection of the process, piping, ducts and equipment for the drying and handling of sludge at the Southwest Sewage Treatment Works at Chicago is within the jurisdiction of the International Brotherhood of Boiler Makers and Iron Ship Builders and Helpers of America.

**Memorandum to the Decision on the Drying and Handling of Sludge at the Southwest Sewage Treatment Works in Chicago.**

**MAY 25, 1938**

This decision is limited to the fabricated steel ducts, through which sludge passes in the drying process, as explained in the opinion accompany-

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ing the decision. It does not apply to the piping of coal, which was specifically withdrawn from the complaint, nor does it apply to the equipment between the furnace and the pre-heater or between the pre-heater and the roof. It does not apply to any other portion of the equipment which is regularly in the jurisdiction of any other International Building and Construction Trades Union.

(Signed) JOHN A. LAPP, *Referee*.  
Building and Construction Trades Dept.,  
American Federation of Labor.

**Decision in the Matter of Setting of Vitrolite and  
Similar Forms of Structural Glass**

JUNE 14, 1938

**THE DECISION**

The Referee finds and decides that the setting of vitrolite and similar structural glass on inside work belongs within the jurisdiction of the Bricklayers, Masons and Plasterers' International Union of America, except when such structural glass is set in panels, sash, frames or mouldings or with toggle bolts, screws, rosettes or similar fastenings, or secured in some other manner common to the work of the Glaziers. The Referee finds and decides that vitrolite and similar structural glass, when set on outside walls of buildings or structures, in mortar, cement or plastic material or when anchored to the wall in the manner common to the trade of the Marble Setter, belongs within the jurisdiction of the Bricklayers, Masons and Plasterers' International Union of America.

The Referee finds and decides that all outside work around windows and entrances in store and

office fronts opening on streets, arcades, corridors or other public places, including columns at such entrances, belongs to the Brotherhood of Painters, Decorators and Paperhangers of America. The above shall include substantial borders not exceeding three feet around such windows and entrances. Other outside installation of structural glass on exterior walls belongs to the Brotherhood of Painters, Decorators and Paperhangers of America, if set on one or more sides in panels, frames or mouldings or with metal or other strips used to support it or if secured with toggle bolts, screws or similar fastenings, despite the additional use of any form of plastic or mastic composition.

The installation of structural glass, when used as background for store and office signs and advertising, is within the jurisdiction of the Brotherhood of Painters, Decorators and Paperhangers of America.

When glass is used of a thickness of more than one-half inch, its installation belongs within the jurisdiction of the Bricklayers, Masons and Plasterers' International Union of America, unless it is set in sash frames, doors or skylights in a manner similar to that used by Glaziers.

Wherever at this time any local agreement exists which is affected in any way by this decision, the effective date of this decision shall be in such cases three months from this date, or September 14, 1938, otherwise the decision is effective as of this date.

The Referee is aware of the fact that there are many variations in the installation of structural glass and that some specific cases may not be covered by this decision. He believes that the

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International Officers of the two Unions involved can readily find a solution for any specific application on the basis of the broad principles laid down in this decision and he suggests that on the basis of this decision, provision be made that any dispute over its application be referred for interpretation to the Referee or some other impartial agency.

**Jurisdiction Over the Assembling and Erection of Certain Meal Bins, Grit Bins and Grain Bins in the Eichler Brewery, New York City.**

OCTOBER 31, 1938.

### THE DECISION

The decision of the Building Trades Employers' Association of the City of New York, granting jurisdiction over the erection of grain storage bins in the Eichler Brewery to the International Association of Bridge, Structural and Ornamental Iron Workers is overruled and the dispute is declared to be one which must be submitted to arbitration according to the provisions of Section 7 of the agreement between the International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers and the International Association of Bridge, Structural and Ornamental Iron Workers.

(Signed) JOHN A. LAPP, *Referee*.

**DECISION RENDERED BY PETER ELLER,  
NATIONAL REFEREE IN DISPUTE OVER  
ASPHALT AND RUBBER TILE, ROLL  
AND SHEET LINOLEUM.**

July 6, 1942.

United Brotherhood of Carpenters and Joiners of America.

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**Brotherhood of Painters, Decorators and Paper Hangers.**

**United Slate, Tile, and Composition Roofers, Damp and Waterproof Workers' Association.**

**Bricklayers, Masons and Plasterers' International Union.**

**Operative Plasterers and Cement Finishers' International Union.**

In addition, briefs setting forth the claims of the respective organizations were also sent to the Referee.

After due and careful consideration, it is the decision of the Referee that the jurisdiction of the work in question be divided between the United Brotherhood of Carpenters and Joiners, and the Brotherhood of Painters on the following basis:

To the Brotherhood of Painters, Kansas City, Missouri and all territory to the Westward.

To the United Brotherhood of Carpenters and Joiners, all territory East of Kansas City.

In connection with the decision above stated, the following recommendations are made:

1. That members of the Tile Setters affiliated with the B. M. P. I. U., and the Cement Finishers affiliated with the O. P. C. F. I. A. capable of doing this work be taken into either or both the organizations above mentioned without payment of initiation fee and without losing their membership in their own organizations, somewhat on the basis of the agreement now existing between O. P. C. F. I. A. and B. M. P. I. U. relative to the exchange of cards in connection with plastering.
2. On account of the prolonged controversy

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over the work in question, it is suggested that this decision be not made effective for three (3) months so as to permit of any necessary adjustments on existing contracts.

3. This decision deals solely with the material mentioned above when used on floors and characterized as "resilient floors" or "resilient floor coverings." It does not cover roofing nor the application of these materials to walls.

P. W. ELLER,  
*National Referee.*

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**DECISIONS RENDERED BY NATIONAL REFEREE WILLIAM L. HUTCHESON.**

Decision by the National Referee of the Building and Construction Trades Department, William L. Hutcheson, in the jurisdictional dispute between International Hod Carriers, Building and Common Laborers Union of America and United Association of Journeymen Plumbers and Steamfitters of the United States and Canada in the matter of installation of non-metallic piping for sewers.

The following is a resume, conclusions and findings by the National Referee for the Building and Construction Trades Department, in the case of the jurisdictional dispute between the International Hod Carriers, Building and Common Laborers' Union of America and the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, in the matter of: installation of non-metallic pipe for sewers.

The hearing was called to order, by the Referee, on Monday, October 8, 1945, at 10 a. m., in the Netherland Plaza Hotel, Cincinnati, Ohio.

Present at the hearing were representatives of the Hod Carriers and Common Laborers' Union; Plumbers and Steamfitters; Bricklayers International Union and the Brotherhood of Teamsters.

Representatives of the Hod Carriers and Common Laborers' submitted preliminary objections to the Referee having jurisdiction in the dispute.

Their objections were primarily based on the contention that there was in existence an agreement between the Hod Carriers, Building and Common Laborers' Union and the United Asso-

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ciation of Journeymen Plumbers and Steamfitters, and in substantiation of their contention they submitted an agreement as of the date, January 23, 1941, between the two organizations.

In their remarks in reference to their preliminary objections the statement was made by representatives of the Hod Carriers and Common Laborers' that they were ready to meet any of the trades that have any claim to work covered in the agreement.

Representatives of the United Association of Plumbers and Steamfitters replied to the objection raised by representatives of the Hod Carriers and Common Laborers' but stated that they recognized the agreement as of January 23, 1941.

After hearing both parties present their views in reference to the agreement, and listening to considerable discussion, the Referee stated that he was placed in the position of having to make a ruling on the agreement as of January 23, 1941, and ruled that said agreement was a bona fide agreement, without any interpretation of the meaning thereof, and should stand as an agreement between the two organizations; with the understanding that there should be no infringement upon the jurisdiction of other organizations.

After the above ruling was made the two contesting parties were asked to arrange to meet and see if some mutual understanding could be arrived at, after which the hearing was adjourned at 11:30 a. m. (October 8) until the next morning at 10 a. m.

The hearing was reconvened on Tuesday, October 9, at 10 a. m.

A report was asked for by the Referee as to what, if any, progress was made in reference to

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reaching an understanding, and it was stated that no understanding was reached.

The Referee then stated that while it was permissible for the two organizations to enter into an agreement, such as was reached January 23, 1941, inasmuch as no understanding was reached yesterday afternoon in the conference that was held by representatives of the two organizations, he would rule that the case which was referred to him by the Acting President of the Building and Construction Trades Department in May, 1944, would be heard as per that arrangement.

A representative of the Hod Carriers then asked if the dispute before the Referee was covered by the agreement.

The Referee, in reply to that question, stated that until he heard the evidence he would not be able to determine whether it came under the agreement, or whether it did not, and that he would reach that conclusion after he had heard the evidence.

A representative of the Hod Carriers and Common Laborers' then stated, if a hearing was going to be held on the merits of the case they were in the unfortunate position of being unable to participate, for the reasons: that the agreement itself is self-explanatory to some degree, and in order to clarify it more, the respective International Presidents of the disputant parties appointed committees for the purpose of clarification, and when they reached an interpretation they sent a letter to the respective International Presidents, which letter they stated they wished to read.

Objections were raised by representatives of the Plumbers which brought forth a discussion as

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between they and representatives of the Hod Carriers and Common Laborers' after which the Referee stated that he would allow the letter to be read and then determine whether it would go into the record, or whether it would not.

After the letter was read the Referee asked what the purpose for reading it was, and was answered by a representative of the Hod Carriers and Common Laborers' that the purpose in reading the communication was to show that the interpretation arrived at by the committee was in good faith.

The Referee then ruled that in the original agreement no reference was made in regards to appointing a committee to interpret the meaning thereof, and further ruled that the letter would not appear in the record.

After some discussion and statements by representatives of the two organizations, during which reference was made to a decision rendered by Acting President of the Building and Construction Trades Department, representatives of the Hod Carriers and Common Laborers' asked to be excused on the grounds that participation by them in the hearing on the merits of the case would constitute a waiver of their rights, with leave to appeal the matter further.

In the discussion they were asked if they wished to appeal. They stated: With leave to appeal the matter further. They were informed that it was up to them to follow the laws of the Department and the Federation inasmuch as the Referee had no authority to say whether they had a right to appeal or whether they did not.

Representatives of the Hod Carriers and Common Laborers' further contended if they anticipated

that they would waive their rights as the work in contention was covered by the agreement which had been recognized, and inasmuch as they had other tribunals to go to they interjected the last request that they be given leave to appeal.

A discussion (off the record) was had at this point, when it was again asked by one of the representatives of the Hod Carriers that his point be made a part of the record. Asked to repeat his statement, he stated, they were unable to participate in the case on its merits. He was asked if he wanted to use the word "unable" or "unwilling." He replied, we are placed in the position of being unable to participate in the hearing by reason of the fact that it would constitute a waiver of our rights, in the absence of a ruling by the Referee as to whether the dispute was covered by the agreement.

They were informed by the Referee that it would be a part of the record as to why they were not going to participate.

The Plumbers then proceeded to present evidence to substantiate their claim for work, as per the decision of Acting President Gray.

They presented extensive briefs and evidence to substantiate their claim, consisting of numerous exhibits and illustrations of installations of the work in contention.

After they completed presentation of their evidence the matter was reported to the Executive Council of the Building and Construction Trades Department for consideration, and action, for the benefit and information of the Referee as to what the desires of the Council were in reference to making a finding and decision, because of the Hod Carriers and Common Laborers' withdrawing from

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the hearing; after which the Executive Council took the following action:

"Action of Council: Referee should proceed and render decision in accordance with Section 7, Page 26 of Constitution of Department.

"Vote: Unanimous. V. P. Hutcheson not voting."

Pursuant to the foregoing action of the Executive Council, and after reviewing the evidence, I have reached the following conclusion:

That the agreement as referred to between the International Hod Carriers, Building and Common Laborers' Union of America and the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, covers work on subways, tunnels, highways, viaducts, streets and roadways in connection with sewers and water mains, and therefore, does not apply to the question at issue, which is, the decision rendered by the Acting President of the Building and Construction Trades Department, Richard J. Gray, which was rendered under date of March 13, 1944, in the dispute between Laborers and Plumbers over the laying of sewer pipe from main sewer into dwelling, or from inside property line to dwelling, and is not in any way referred to by the agreement of January 23, 1941, entered into between the two organizations.

Records show that the request for a decision came to the Acting President in the regular manner, and that he rendered his finding on the date of March 13, 1944, and in referring to the matter stated it was a jurisdictional dispute between Laborers' and members of the Journeymen Plumbers and Steamfitters over the laying of lateral sewer pipe from main sewer into dwelling or from

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inside property line to dwelling, and the following decision was rendered:

#### **"DECISION"**

The work in dispute shall be done by members of the United Association of Journeymen Plumbers and Steam Fitters.

In the opinion of the undersigned, acting as Referee, the decision rendered by Acting President Gray, was in conformity with the evidence submitted to me as Referee, and in no way comes under the agreement entered into between the two contending organizations as of January 23, 1941.

Therefore my decision is as follows:

October 13, 1945.

1. That the agreement, dated January 23, 1941, between the International Hod Carriers, Building and Common Laborers' Union of America and the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada is a bona fide agreement between the two organizations, but should not be accepted by the Department until clarifying language is inserted therein giving to the Bricklayers' International organization jurisdiction over work on sewers which they have heretofore performed.

Also that there should be a clarification in reference to the unloading and distributing of pipe so that there would be no infringement upon the recognized jurisdiction of the Teamsters International organization.

There should also be a further clarification if any other organization presents evidence to show that the agreement infringes upon their jurisdiction.

2. That the laying of lateral sewer pipe from main sewer into dwelling, or from inside property

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line to dwelling is work that should be done by, or under the supervision of, members of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada.

WM. L. HUTCHESON (Signed)  
*National Referee,*

*Building and Construction Trades Department*

(NOTE—This in no way deletes or expunges from the records of this Department the letter of March 9, 1946, addressed to the Morris County, New Jersey, Building and Construction Trades Council or the advice contained in Vice President Hutcheson's telegram of March 27, 1946.)

**Pointing, Taping and Filling of Joints  
on Wall Board**

May 19, 1947.

Mr. Richard J. Gray, President

Building and Construction Trades Department  
501 A. F. of L. Building.  
Washington 1, D. C.

Dear Sir and Brother:

In the matter of the jurisdictional controversy over the pointing, taping and filling of joints on wallboard in preparing it to receive paint and other wall coverings, involving the Brotherhood of Painters, Decorators and Paperhangers of America; Bricklayers, Masons and Plasterers International Union of America and the Operative Plasterers and Cement Finishers International Association of the United States and Canada, a hearing was held in the Executive Council room, American Federation of Labor building, May 6, 1947.

Representing the organizations involved were: Harry C. Bates, President of the B. M. and P. I. U. of A.; John E. Rooney, President of the

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O. P. and C. F. I. A.; L. P. Lindelof, General President, E. of P. D. and P. of A.; Joseph P. Hillock, Painters, Washington, D. C.; J. C. Moenick, Secretary-Treasurer, Painters District Council, Chicago, Ill.; Milton R. Stephens, Plasterers, Washington, D. C., and Walter Redmond, International Secretary of the O. P. and C. F. I. A.

After giving the statements made, and evidence submitted, careful consideration I have reached a conclusion and render the following decision; to wit:

When plaster material is used to do pointing and filling it shall be the work of members of the Operative Plasterers and Cement Finishers International Association of the United States and Canada—and/or—members of the Bricklayers, Masons and Plasterers International Union of America.

When adhesive materials are used it shall be the work of members of the Brotherhood of Painters, Decorators and Paperhangers of America.

Respectfully submitted,

WM. L. HUTCHESON (Signed)

*Referee.*

*Building and Construction Trades Department.*

Sitting with Referee at hearing were: Vice Presidents Wm. J. McSorley and Robert Byron of the Building and Construction Trades Department.

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## **Erection of Catwalks and Stairways**

**May 19, 1947.**

**Mr. Richard J. Gray, President  
Building and Construction Trades Department  
501 A. F. L. Building,  
Washington 1, D. C.**

**Dear Sir and Brother:**

**In the matter of the jurisdictional controversy over the erection of catwalks and stairways involving the International Association of Bridge, Structural and Ornamental Iron Workers and the International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, a hearing was held in the Executive Council room, American Federation of Labor building, May 8, 1947.**

**Representing the organizations involved were: P. J. Morrin, General President; J. H. Lyons, General Secretary; J. J. Dempsey, General Treasurer, International Association of Bridge, Structural and Ornamental Iron Workers; also Clyde F. Strickland, Vice President and Leslie L. Myers, Washington, for the Iron Workers and J. V. Kearney, International Vice President and T. L. Wants, Special Representative, International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.**

**Representatives of the two Internationals appeared before the undersigned, as Referee, and submitted briefs and evidence to substantiate their claims, and among other things presented an agreement entered into between the two organizations in 1928. Their attention was called to the provisions of Sections 37 and 38 of the Constitution of the Building and Construction Trades Department which set forth:**

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"Nothing in Sections 37 and 38 is to be construed as giving any organization the right to reopen any case listed by the Building and Construction Trades Department and published in the records of the Department."

After their briefs were presented a full discussion was held in reference to the matter and it is the opinion and conclusion of the undersigned that the decision rendered by the President of the Department under date of January 27, 1947, would seem to be as clear a clarification of their agreement in reference to the erection of catwalks and stairways as could be arrived at under the wording of the agreement, and I herewith quote the decision of the President of the Building and Construction Trades Department as of January 27, 1947.

"Where catwalks, ladders and stairways are erected in connection with bubble towers and tanks and are attached to the structural steel supports this work shall be the work of the members of the International Association of Bridge, Structural and Ornamental Iron Workers.

"Where such catwalks, ladders and stairways are riveted or welded to the watertight sections of the bubble towers or tanks this work shall be done by the members of the International Brotherhood of Boilmakers, Iron Ship Builders and Helpers."

Respectfully submitted

WM. L. HUTCHESON (Signed)

*Referee,*

*Building and Construction Trades Department.*

Sitting with Referee at the hearing were: Vice Presidents Wm. J. McSorley and Martin P. Durkin of the Building and Construction Trades Department.

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**Q-Panels**

**May 19, 1947.**

**Mr. Richard J. Gray, President  
Building and Construction Trades Department  
501 A. F. of L. Building,  
Washington 1, D. C.**

**Dear Sir and Brother:**

In the matter of the jurisdictional controversy over the erection of aluminum Q-panels involving the Sheet Metal Workers International Association and the International Association of Bridge, Structural and Ornamental Iron Workers, a hearing was held in the Executive Council room, American Federation of Labor building, May 7, 1947.

Representing the organizations involved were P. J. Morrin, General President; J. H. Lyons, General Secretary and J. J. Dempsey, General Treasurer, International Association of Bridge, Structural and Ornamental Iron Workers; Glenn Hurley, Superintendent, H. H. Robertson Company; George Bigelow, Manager of Erection, H. H. Robertson Company, and George L. Illig, Contract Department, H. H. Robertson Company, and Robert Byron, General President, Sheet Metal Workers International Association and Joseph Fredericks, Sheet Metal Workers International Association.

At the hearing held, briefs were submitted and statements made by the contesting parties, as well as a display of the material in question.

In the statements made by representatives of the two Internationals, considerable emphasis was made in reference to decisions rendered some years ago giving to the Sheet Metal Workers jurisdiction over the installation of metal of ten gauge or

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lighter, but the question before the Referee in this case was the installation of Q-panels.

After giving the evidence as submitted due consideration I am of the opinion that:

The erection of Q-panels, which was the point at issue, when fastened to the steel structure of a building, should be the work of members of the International Association of Bridge, Structural and Ornamental Iron Workers.

However, any flashing or ventilator work in connection therewith should be the work of the members of the Sheet Metal Workers International Association.

Respectfully submitted,

WM. L. HUTCHESON (Signed)

*Referee,*

*Building and Construction Trades Department.*

Sitting with Referee at the hearing were: Vice Presidents Wm. J. McSorley and Martin P. Durkin of the Building and Construction Trades Department.

Robertson Protected Metal

May 19, 1947.

Mr. Richard J. Gray, President  
Building and Construction Trades Department  
501 A. F. of L. Building,  
Washington 1, D. C.

Dear Sir and Brother:

In the matter of the jurisdictional controversy over the erection of Robertson Protected Metal involving the Sheet Metal Workers International Association and the International Association of Bridge, Structural and Ornamental Iron Workers, a hearing was held in the Executive Council room,

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American Federation of Labor building, May 7, 1947.

Representing the organizations involved were P. J. Morrin, General President; J. H. Lyons, General Secretary and J. J. Dempsey, General Treasurer, International Association of Bridge, Structural and Ornamental Iron Workers; George Bigelow, Manager of Erection, H. H. Robertson Company, and Robert Byron, General President, Sheet Metal Workers International Association, and Joseph Fredericks, Sheet Metal Workers International Association.

When this case came on for hearing on the question of erection of Robertson Protected Metal, in presenting their briefs and evidence, the two contestants both referred to a ruling or decision rendered under date of May 26, 1923, by the former Board of Jurisdictional Awards, and while it was admitted by representatives of both International organizations that the ruling made as above referred to; namely May 26, 1923, has been recognized and published in the records of the Building and Construction Trades Department, attention was also called to Paragraph 5, Section 38 of the Constitution of the Building and Construction Trades Department which sets forth:

"Nothing in Sections 37 and 38 is to be construed as giving any organization the right to reopen any case listed by the Building and Construction Trades Department and published in the records of the Department."

Under that provision I can only reach the conclusion that as Referee I would have no right to render a definite decision in the case at issue.

If the two contesting International organizations desire a clarification of the action taken by the

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former Board of Jurisdictional Awards under date of May 26, 1923, they could by joint request ask for such interpretation or clarification.

Respectfully submitted,

WM. L. HUTCHINSON (Signed)

*Referee,*

*Building and Construction Trades Department.*

Sitting with Referee at the hearing were: Vice Presidents Wm. J. McSorley and Martin P. Durkin of the Building and Construction Trades Department.

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**DECISIONS OF NATIONAL JOINT BOARD  
FOR SETTLEMENT OF JURISDICTIONAL  
DISPUTES, BUILDING AND CONSTRUCTION  
INDUSTRY & HEARINGS PANELS.**

**DECISION OF JOINT BOARD NO. 3**

**Beer Lines, Wort Lines, Yeast Lines, CO<sub>2</sub>  
Lines, and Refrigeration in Connection  
With Attenuator Tanks**

**AUGUST 20, 1948**

Dispute between the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and the Sheet Metal Workers' International Association.

The issue in dispute is the installation of copper piping in breweries for beer lines, wort lines, yeast lines, CO<sub>2</sub> lines, and refrigeration in connection with attenuator tanks.

After carefully considering all of the evidence and argument as presented by both sides, the Joint Board decides as follows:

The installation of streamlined or other manufactured copper pipe or fittings for beer lines, wort lines, yeast lines, CO<sub>2</sub> lines is the work of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada. The installation of copper attenuator coils in the interior of tanks and vats in breweries is the work of the Coppermiths, members of the Sheet Metal Workers' International Association.

The decision of the Joint Board is unanimous.

WM. J. MCSORLEY,

HARRY C. BATES,

ARTHUR H. WELLS,

A. HERRMANN WILSON,

JOHN T. DUNLOP,

*Chairman.*

### DECISION OF JOINT BOARD NO. 15

Steel Decking, Roofing, Flooring, Raceway for  
Electrical Wiring

AUGUST 21, 1948

Dispute between the Sheet Metal Workers International Association and the International Association of Bridge, Structural and Ornamental Iron Workers.

The issue in dispute is that involved in cases 15 and 22. The Joint Board may consider the whole issue of the installation of steel decking in accordance with the agreement between the two unions.

After carefully considering all of the evidence and argument as presented by both sides, and two intervening organizations, the Joint Board decides as follows:

The installation of steel decking for roofing, if 10 gauge or lighter, is the work of the Sheet Metal Workers International Association. The installation of steel decking for flooring is the work of the International Association of Bridge, Structural and Ornamental Iron Workers. This decision cannot alter previous decisions of record, such as January 26, 1928 (Holorib), May 19, 1947 (Q-Panel), June 3, 1948 (Metro-Deck). Whenever steel decking for flooring or roofing is used as a raceway for electri-

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cal wiring the electrical work in connection with the raceway is that of the International Brotherhood of Electrical Workers.

The decision of the Joint Board is unanimous.

WM. E. MALONEY,  
L. P. LINDELOF,  
ARTHUR H. WELLS,  
ALBERT BEEVER,  
JOHN T. DUNLOP,  
*Chairman.*

## JOINT BOARD NO. 2

### Pre-Heating and Stress Relieving of Welds

SEPTEMBER 22, 1948

Dispute between the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and the International Brotherhood of Electrical Workers.

The issue in dispute is the pre-heating and stress relieving of welds.

After carefully considering all of the evidence and argument as presented by both sides the Joint Board decides as follows:

The installation of induction pre-heating and stress relieving equipment, including the wrapping of coils, is the work of the International Brotherhood of Electrical Workers.

The installation of manufactured resistance coils shall be the work of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry.

The operation of the pre-heating and stress relieving equipment and instruments for pipe welding is the work of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry.

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The decision of the Joint Board is unanimous.

WM. J. MCSORLEY,  
L. P. LINDELOF,  
ARTHUR H. WELLS,  
C. J. EBBENSHADE,  
JOHN T. DUNLOP,  
*Chairman.*

**CLARIFICATION BY JOINT BOARD NO. 2**

**FEBRUARY 28, 1949**

Board of Trustees,  
National Joint Board for Settlement of  
Jurisdictional Disputes,  
901 Massachusetts Avenue, N. W.,  
Washington 1, D. C.

**Re: JOINT BOARD NO. 2**

Dear Sirs:

Joint Board No. 2 has carefully considered the issues raised by correspondence from the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry and the International Brotherhood of Electrical Workers concerning our decision of September 22, 1948, as directed by the Board of Trustees of January 11, 1949.

The Joint Board finds that the issues now referred to it concerns the unwrapping of induction coils, the handling and moving of the equipment including the secondary cable leads, the installation of water cooled coils and the wrapping of resistance coils—as distinguished from the installation of manufactured resistance coils.

The Joint Board has reviewed the full record of its proceedings, and the recent letters from the two organizations, and has unanimously concluded that

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these issues are covered by paragraph one of its decision.

Very truly yours,

(Signed) WM. J. MCSORLEY,  
L. P. LINDELOF,  
ARTHUR H. WELLS,  
C. J. ESKENSHADE,  
JOHN T. DUNLOP,  
*Chairman.*

### DECISION OF JOINT BOARD NO. 17

#### Operation of Gasoline Driven Electric Generators for Welding

OCTOBER 27, 1948

In the dispute between the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and the International Union of Operating Engineers.

The issue in dispute is the operation of gasoline driven electric generators for welding.

After consideration of the evidence and argument advanced by all parties, the Joint Board decides that the work in dispute is covered by Resolution 124 (American Federation of Labor, Norfolk Convention) and is the jurisdiction of the International Union of Operating Engineers.

The decision of the Joint Board is unanimous.

JOHN E. ROONEY,  
L. P. LINDELOF,  
FRANK W. BARNES,  
CYRIL J. STATT,  
JOHN T. DUNLOP,  
*Chairman.*

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## ASH HOPPERS AND FURNACE BOTTOMS

~~OCTOBER~~ 6, 1950

The dispute referred to the Hearings Panel, which held its hearing in Washington, D. C., on August 29, 1950, is decided as follows:

The installation of ash hoppers is within the jurisdiction of the Iron Worker; the installation of furnace bottoms is within the jurisdiction of the Boilermakers.

For the purposes of providing a line of demarcation between furnace bottoms and ash hoppers for the purpose of determining the jurisdiction of work between the two trades:

- (a) A furnace bottom shall be defined as that bottom part of the furnace or chamber subject to direct and continuous exposure to the fire in the furnace that is air and/or water tight.
- (b) An ash hopper is any container for ash which is not subject to direct and continuous exposure to the fire in the furnace whether or not air or water tight.

As stated in the minutes of the hearing of August 29, 1950, the above decision does not affect the recognized jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, United Brotherhood of Carpenters and Joiners of America, Sheet Metal Workers International Association, International Union of Operating Engineers, and the Bricklayers, Masons and Plasterers' International Union of America as stipulated on the record by both the Iron Workers and Boilermakers during the hearing.

(Signed) HARRY C. BATES.  
CHARLES AQUADRO.  
JOHN T. DUNLOP.

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## INSTALLATION OF CEILING SYSTEMS

JANUARY 15, 1968

This dispute, which was referred by the National Joint Board on November 23, 1965, was the subject of hearings before the Hearings Panel in Washington, D. C., March 4, 1966, and May 16 and 17, 1966. The decision of the Hearings Panel was issued August 24, 1966, but was stayed because of court litigation until January 15, 1968. The decision of the Hearings Panel, which was upheld by decisions of the U. S. District Court for the District of Columbia, the U. S. Court of Appeals for the District of Columbia Circuit and the Supreme Court of the United States, is as follows:

1. The decision of this Hearings Panel is limited to the jurisdictional disputes or work assignments in controversy between lathers and carpenters involved in the installation of ceiling systems. Nothing in this decision shall affect the jurisdiction or work assignment of any other trade, such as, but not limited to, the sheet metal workers, electricians, iron workers, etc., with a claim or interest in the installation of ceiling systems. Contractors shall use this decision as a basis for making work assignments only with regard to work in the installation of ceiling systems involving carpenters and lathers.

2. The installation of gypsum wallboard and other types of panels fastened directly to ceiling joists shall be performed by carpenters. In the event that a carrying channel is used with gypsum wallboard or other types of panels attached thereto, notwithstanding paragraph 4(a) below, the contractor may use carpenters to install the carrying channel in areas not exceeding 300 square feet where there are no lathers on the job.

3. The installation of light iron work in ceiling

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systems with gypsum, Portland cement, acoustical or other plasters sprayed-on or trowel-applied over lath or directly to structural members shall be performed by lathers.

4. The following types of ceiling systems are included in this paragraph: Direct Hung Suspension System; Attached Concealed System without Backing Board; Furring Bar Attached System; Furring Bar Suspension System; Indirect Hung Suspension System or similar systems.

(a) The installation of the 1½" channel or similar carrying channel and hangers in any of the above types of systems shall be performed by lathers.

(b) The installation of all other work, including the installation of a ceiling system in its entirety if no 1½" channel or other carrying channel is used, shall be performed by carpenters.

5. This decision shall be effective on all work assignments made on construction contracts let after January 15, 1968.

#### HEARINGS PANEL

PETER T. SCHOEMANN (Signed)

HUNTER P. WHARTON

WM. E. NAUMANN

ED S. TORRENCE

JOHN T. DUNLOP

*(Impartial Umpire)*

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**Procedural Rules  
And Regulations  
of the  
National Joint Board  
For Settlement of  
Jurisdictional Disputes  
Building and  
Construction Industry  
and  
Appeals Board  
Procedures**

**APRIL 17, 1968**



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# **Procedural Rules and Regulations of the National Joint Board for Settlement of Jurisdictional Disputes and Appeals Board Procedures**

OCTOBER 20, 1949

*As Amended Feb. 29, 1952, Sept. 18, 1953,  
Sept. 1, 1955, April 13, 1956, August 28, 1957,  
May 8, 1958, Feb. 9, 1961, April 4, 1962,  
Sept. 1963, Feb. 1965, April 1, 1965,  
July 21, 1965, April 17, 1968*

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## **PROCEDURAL RULES AND REGULATIONS OF THE NATIONAL JOINT BOARD**

**These procedures shall apply to:**

**(a) Contractors who employ members of the organizations affiliated with the Building and Construction Trades Department, AFL-CIO, and who have signed a stipulation setting forth that they are willing to be bound by the terms of the agreement establishing the Joint Board, or who are members of a signatory association of contractors with authority to bind its members, or who are parties to a collective bargaining agreement providing for the settlement of jurisdictional disputes under the procedures herein set forth. The stipulation form adopted by the Joint Board provides:**

**Date \_\_\_\_\_**

**"In signing this stipulation, the undersigned agrees to be bound by the terms and provisions of the agreement effective May 1, 1948, as amended by agreement effective October 1, 1949, creating the National Joint Board for Settlement of Jurisdictional Disputes. In particular, the undersigned agrees to be bound by the provision of the agreement which states: 'any decision or interpretation by the joint Board (or Hearings Panel) shall immediately be accepted and complied with by all parties signatory to this agreement.' This authorization shall run for the term of the agreement, and shall continue in effect for each year thereafter unless specifically terminated at the**

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renewal date of said agreement which is March 31.

(Signed) \_\_\_\_\_"

(b) All unions affiliated with the Building and Construction Trades Department, AFL-CIO, in the building and construction industry.

## **MAINTENANCE OF OPERATIONS ON PROJECTS**

To prevent jurisdictional disputes from arising on projects or over method of starting a project, unions and contractors, as qualified and designated herein, are directed to follow the procedures outlined below.

## **CONTRACTOR'S RESPONSIBILITY**

1. Contractors subletting work should stipulate that subcontractors be bound by agreement establishing National Joint Board and its procedural rules in assignment of work.

2. The contractor who has the responsibility for the performance and installation shall make a specific assignment of the work. For instance, if contractor A subcontracts certain work to contractor B, then contractor B shall have the responsibility for making the specific assignment for the work included in his contract. If contractor B in turn shall subcontract certain work to contractor C, then contractor C shall have the responsibility for making the specific assignment for the work included in his contract. It is a violation of the plan for the contractor to hold up disputed

work or shut down a project on account of a jurisdictional dispute.

3. The assignment to be made by the contractor shall be according to the following basis:

(a) Where a decision of record applies to the disputed work, or where an agreement of record between the disputing trades applies to the disputed work, the contractor shall assign the work in accordance with such agreement or decision of record. Agreements and decisions of record are compiled in the "Green Book" published by the Building and Construction Trades Department, AFL-CIO, ("Agreements and Decisions Rendered Affecting the Building Industry"). Where a national agreement between the disputing trades applies that has been filed with the Joint Board and attested by the Chairman, even though not an agreement of record, the contractor shall assign the work in accordance with such agreement. In negotiating such national agreements between International Unions, consultation with the appropriate management groups on the making of agreements between International Unions is desirable and should be carried on.

Decisions of record are applicable to all trades. Agreements of record are applicable only to the parties signatory to such agreements.

(b) Where no decision or agreement under (a) applies, the contractor shall assign the disputed work in accordance with the prevail-

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ing practice in the locality. The locality for the purpose of determining the prevailing practice shall be defined ordinarily to mean the geographical jurisdiction of the local Building and Construction Trades Council in which the project is located.

(c) If a dispute has arisen prior to the specific assignment of work where no decision or agreement under (a) applies, or where there is no predominant practice in the locality, the contractor shall nonetheless make a specific assignment according to his best judgment after consulting the representatives of the contesting trades and considering any arguments or facts the trades may wish to present regarding the applicable decisions or agreements of record or practice in the locality. The contractor should also consult any local association of contractors in the locality regarding the established practice.

4. When a contractor has made an assignment of work, he shall continue the assignment without alteration unless otherwise directed by the Joint Board or by agreement between the International Unions involved.

(a) Unloading and/or handling of materials to stockpile or storage by a trade for the convenience of the responsible contractor when his employees are not on the job site, or in an emergency situation, shall not be considered to be an original assignment to that trade.

(b) Starting of work by a trade without a specific assignment by an authorized representative of the responsible contractor shall

not be considered an original assignment to that trade, provided that the responsible contractor, or his authorized representative, promptly, and in any event within eight working hours following the start of the work, takes positive steps to stop further unauthorized performance of the work by that trade.

5. In the event that there is any stoppage of work, or threat of a stoppage, or cessation of operations, arising out of jurisdictional dispute following an assignment of work, the contractor is to notify immediately the Chairman of the Joint Board, 815 16th Street N.W., Washington, D. C. 20006.

Such notice of work stoppage shall indicate:

The contractors

Their addresses

Project

Location

The disputing trades

An account of the events leading to the work stoppage or threatened work stoppage

A full and detailed description of the work in dispute.

The assignment of work that has been made and

The contractor making the assignment.

## **UNION'S RESPONSIBILITY**

1. The agreement provides (Article V, Section 1) that "Pending a decision by the Board or such settlements as may be arrived at through the office of the Chairman of the Joint

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Board, there shall be no stoppage of work arising out of any jurisdictional dispute."

2. When a contractor has made a specific work assignment, all unions shall remain at work and process any complaint over a jurisdictional dispute in accordance with the procedures herein established by the Joint Board. Any union which protests that a contractor has failed to assign work in accordance with the procedures specified above, shall remain at work and process the complaint through its international office. The Joint Board is prohibited from taking action on protests directly from Local Unions or Building and Construction Trades Councils.

3. An International Union may file with the Joint Board a protest against the work assignment of a contractor on a particular project. Such protest of assignment shall indicate the project, the name and address of contractors, location of the project, the disputing trades, an account of events leading to the work assignment, and a full and detailed description of the work in dispute. The International Union shall also indicate the basis of its protest of the assignment by the contractor. The International Union shall cite any decision or agreement of record on which its protest is based. When no decisions or agreements of record are applicable the International Union shall cite the basis for its protest of assignment. Any International Union may also notify the Joint Board of a work stoppage engaged in by another union. The International Union before filing a request for a job

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decision shall advise its local union to notify the contractors of its claim for the disputed work and to seek to settle such dispute prior to filing the case with the Joint Board.

When the International Union filing a request for a job decision is directed to comply with the requirement of notification to the employer of a jurisdictional dispute, a compliance notice shall be forwarded to the Chairman of the National Joint Board, who shall forward a copy of such notice to the other union or unions involved in the dispute prior to consideration and decision of the National Joint Board.

4. When an International Union has been directed by the Joint Board to direct the return of men to work, or to furnish men to a project, in a jurisdictional dispute, the General President of the International Union shall promptly comply with the order of the Joint Board. He shall use all the authority of the International Union to secure prompt compliance with a cease-work-stoppage order of the Joint Board.

In line with the intent of the above paragraph, picket lines of a jurisdictional nature must be handled immediately by the Chairman of the National Joint Board. The Chairman, when a jurisdictional picket line is brought to his attention, will immediately send a communication to the Building and Construction Trades Council and to the International whose local has put up the picket line. In addition, a communication will be sent to any other internationals whose local is recognizing the picket line.

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5. The following declaration of policy by the Building and Construction Trades Unions is to be observed:

WHEREAS it is recognized that the establishment of picket lines for purposes of objecting to the assignment of work in the building and construction trades results in jurisdictional strikes; and

WHEREAS such picketing and resultant strikes are in violation of the Constitution of the Building and Construction Trades Department; and

WHEREAS it is herewith the unanimous desire of the General Presidents, the Executive Council of the Department, and the officers of the Department to put a stop to all such illegal picketing, we do on this 15th day of July 1952 herewith declare our policy to be as follows:

1. That no Local Union of an affiliated International Union whose International Union's President's signature appears below shall institute or post picket lines for jurisdictional purposes. To do so will result in immediate disciplinary action by the International President of such Local Union.

2. That no Local Building and Construction Trades Council shall authorize or lend support to any picketing for jurisdictional purposes. To do so will result in immediate steps by the Department officers to revoke the charter of such local Building and Construction Trades Council.

3. That in event pickets are posted by any union for jurisdictional purposes it is our de-

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clared policy that all unions are to ignore such picket line pending appropriate disciplinary action by the International President of the Local Union posting such picket line.

4. Each International President is to forward a copy of this Declaration of Policy to all his affiliated Local Unions and District Councils.

The Department officers shall forward a copy of this Declaration of Policy to each Local and State Building and Construction Trades Council.

### **PROCEDURES USED BY THE JOINT BOARD:**

#### ***A. Work stoppages and Violations of Procedural Rules.***

1. When the Joint Board has received from a contractor or from an International Union notice of a jurisdictional work stoppage, the Chairman of the Joint Board shall notify the General President of the Union (or Unions) engaged in the work stoppage and shall instruct the General President to direct the members on strike to return to work and to perform their assigned work, and to keep work in continuous operation pending a settlement of the dispute. A copy of such return-to-work instructions from the Chairman shall be sent to the contractor, to the other International Union (or Unions) involved in the jurisdictional dispute, and to the President of the Building and Construction Trades Department, AFL-CIO.

2. When the Joint Board has received notice from an International Union that a contractor subject to the plan for the Settlement of Juris-

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dictional Disputes has failed to follow the procedural rules of the Joint Board set forth in the section above on Contractor's Responsibility, the Chairman shall instruct the contractor to comply with the procedural rules in the making of any assignment of work. A copy of such instruction to the contractor from the Chairman shall be sent to the International Unions involved in the dispute over work assignments. These instructions do not constitute a job decision by the Joint Board on the merits of the dispute. They are intended to keep work in continuous operation pending a settlement of the dispute.

**B. Job Decisions.**

When the Joint Board has received a protest of work assignment from an International Union or a request for a job decision from a contractor, it shall proceed to make a job decision as outlined below; provided, however, the Joint Board will not make a job decision in a jurisdictional dispute while there is a work stoppage.

1. Any request for a job decision shall contain the following information:

Name and address of the contractors

Name and location of the project

Disputing trades

An account of the events leading to the dispute

The assignment of work made by the contractor

Steps already taken to adjust the dispute

A full and detailed description of the dis-

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puted work, including pictures, prints or drawings whenever possible, of the disputed work.

When the request is made by an International Union, it shall also state the basis for the claim of work.

2. An International Union shall file one copy of each request for a job decision.

A contractor shall file an original and three copies of each request for a job decision when two unions are involved and an additional copy for each additional union involved, if any.

3. Notice of such request for a job decision when made by an International Union shall be promptly sent by the Chairman to the other International Union (or Unions) directly involved in the dispute; a copy of the request shall be sent promptly by the Chairman to both (all) International Unions directly involved in the dispute when the request for a job decision is filed by a contractor.

The Chairman, subject to review by the Joint Board, shall have discretion when there is a work stoppage to treat a contractor's request for a job decision as a request to return men to work.

4. When notice of a request for a job decision has been sent to an International Union directly affected, such International Union shall be allowed five business days (except as provided below) in which to state its position to the Joint Board. The International Union shall be notified of this period at the same time it is sent notice of the request for a job decision.

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When an International Union requests a job decision and its members remain off the job or hold up disputed work, processing for such decisions shall not start until the International Union has returned its members to work. Upon notification to the Joint Board that the members have returned to work, the usual five-working-day request for position and information will apply.

When a local union remains off the job or establishes a picket line forcing a contractor to request a job decision, and the Joint Board decides that the work in dispute is properly the work of the striking or picketing trade, the effective date of the Joint Board decision shall be delayed by the number of work days the work stoppage or picket line was in effect. For the purpose of this section, computation of the number of days shall start with the date of receipt of the Joint Board notification of the work stoppage or picket line by the International Office of the union involved. During the delay period provided for above, the disputed work shall proceed in accordance with the contractor's original assignment.

5. Where a request for a job decision has been filed with the Joint Board by an International Union, the affected contractor (or contractors) shall be notified and shall be requested to furnish a full description of the disputed work.

6. Where two International Unions have established procedures for the adjustment of jurisdictional disputes without resorting to Joint Board procedures, they shall be allowed

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a reasonable length of time as determined by the Chairman of the National Joint Board in which to effect a settlement. If the International Representatives so assigned are unable to reach agreement, they shall jointly render a statement of facts of the dispute to their International Presidents for presentation to the Joint Board for a job decision. (See page 22)

7. (a) In making a job decision the Joint Board shall utilize the following criteria: Decisions and agreements of record as set forth in the Green Book, valid agreements between affected International Unions attested by the Chairman of the Joint Board, established trade practice and prevailing practice in the locality.

(b) When the Joint Board has decided to process a dispute on the basis of "prevailing practice," the International Unions involved shall be allowed ten business days in which to submit such evidence to the Joint Board. The International Unions shall be notified of this period in each case processed on the basis of "prevailing practice."

Such notice must also include a clear definition of the work on which prevailing practice is to be secured and the locality from which evidence will be received which will be the same for both trades and will be, unless otherwise specified, the geographical jurisdiction of the Local Building and Construction Trades Council in which the project is located. The Joint Board will consider only evidence which identifies projects within this locality and indicates the contractor on the project. It is desirable wherever possible for the evidence to show the

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year the work was performed and the amount of work involved.

8. Each job decision of the Joint Board shall state that the job decision was predicated upon the particular facts and evidence before the Joint Board regarding the dispute and shall be effective on the particular job only.

9. The affected Unions and contractors shall promptly comply with each job decision of the Joint Board.

10. In the event any contending International Organization or affected contractor feels that a decision rendered by the National Joint Board has been in error, it shall be privileged, within ten working days of receipt of a decision, either (a) to request reconsideration of a National Joint Board job decision upon submission of additional written evidence; or (b) to request an oral hearing on such decision by the National Joint Board, provided that the job decision has been accepted and put into effect by the affected parties, and further, that such job decision remain in continuous effect until reconsidered or an oral hearing is held by the Joint Board. The Chairman shall determine the matter of compliance with the job decision in question and, if it is found to be in accordance with the job decision, shall set a date for such reconsideration or oral hearing. The contending International Unions, and in cases where the request for reconsideration or an oral hearing has been filed by a contractor, the contractor shall be notified and given opportunity to present written evidence or be heard in the event of an oral hearing. It is

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permissible at oral hearings for the affected parties to present witnesses. Requests for postponement of an oral hearing must be received by the Joint Board a minimum of forty-eight hours prior to the date scheduled for the hearing.

11. If, during the course of consideration of a dispute, a majority of the members of the Joint Board vote that there is a substantial and material question of fact which cannot be resolved on the basis of the available evidence, the Chairman of the Joint Board shall temporarily suspend the deliberations and appoint a committee of the Joint Board to investigate and report the facts to the Joint Board. The Committee may, in its discretion, proceed to the location of the dispute or may use any other method to secure agreement between the parties to the dispute on the unresolved questions of fact, or make an investigation, on the basis of which it shall make a report as to the facts in question. The agreed upon statements of facts, or the Committee's report on the facts, shall be forwarded to the Joint Board, which thereupon will resume its deliberations. No more than fourteen (14) calendar days shall be allowed for this step in the procedure.

12. In addition to all other requirements in these Rules and Regulations with respect to the form of job decisions rendered by the National Joint Board, it is also required that any such decision shall include a brief statement of the description of the work in dispute and the conclusions of the Joint Board with re-

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spect to the principal material issues which are involved in the dispute. In the event that a decision is made by a divided vote, the minority shall be entitled to present its views in writing and the minority views shall be distributed together with the majority decision.

13. The Joint Board should not ignore the interests of the consumer in settling jurisdictional disputes but should give due regard to such factors as efficiency and economy of operation.

*C. Procedural Rules for Joint Board Meetings.*

1. Alternate as well as regular members of the Joint Board may attend and participate in each meeting.

2. No labor member of the Joint Board shall vote or participate on a case involving the organization from which he is appointed; and alternate labor members shall serve in rotation in place of regular members.

3. Voting in the Joint Board shall be by voice vote.

4. The minutes of the Joint Board shall show the action taken by majority vote; they shall not report the vote of individual members of the Joint Board.

5. Each participant shall present its position on a case in writing to the Joint Board, and the Joint Board shall decide the case on such written record.

6. The following procedural rules shall apply in the application of Section 1(e) of Article III of the Agreement:

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(a) When an International Union not having direct representation on the Joint Board requests a job decision, or immediately on being advised that its position is required in a case in which a job decision has been requested by another International Union or by a contractor, such International Union shall notify the Joint Board whether it elects to designate its representative to participate in the discussion of such case.

International Unions having representation on the Joint Board may, in the event of prolonged illness or prolonged official absence of such Joint Board member, petition the Joint Board to accept representation on the same basis as unions without direct representation during the illness of such Joint Board member.

(b) A participating or stipulated employer national association not having direct representation on the Joint Board shall notify the Joint Board whether it elects to designate its representative to participate in the discussion of a particular case.

(c) Such representatives shall be present at the offices of the Joint Board for the first meeting of the Joint Board following the date on which the position of the International Union is due, unless otherwise notified by the Joint Board.

(d) When such a case is called on the agenda at a meeting of the Joint Board, such representatives shall enter the meeting and participate in the discussion of the case. If an International Union or a participating or stipulated

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employer national association does not notify the Joint Board that it desires to send its representative or if such representative does not appear, the Joint Board shall proceed without such representative.

(e) An International Union or participating or stipulated employer national association not having direct representation on the Joint Board shall be entitled to participate in the discussion preceding a job decision on an appeal from a local plan recognized by the Building and Construction Trades Department.

#### **D. *Locality Decisions***

The Joint Board may, at its discretion, hold oral hearings on repetitive disputes not governed by a decision or agreement of record for the purpose of rendering a decision applying in the locality as defined by the Board. The Joint Board will consider cases for the application of this procedure made by an International Union, a signatory national contractors' association, or by a stipulated local contractors' association. The Joint Board, however, reserves the right to decide whether to proceed to a locality decision or to continue to process requests in the locality on the disputed items on a job-decision basis.

In any case in which this procedure for a locality decision is invoked by the Joint Board, a ten-day notice of hearing shall be furnished to the affected International Unions and the affected stipulated local contractors' association and affected signatory national contractors' association. The requirements of Para-

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graph B(12) shall also apply to locality decisions rendered under this Paragraph D.

**E. Compliance Procedure.**

1. When the Joint Board or the Chairman has requested a General President of an International Union to return members to work in a jurisdictional dispute in accordance with the procedural rules of the Joint Board and such members have not been returned to work, or when the Joint Board has rendered a job decision or taken other action and the General President of an International Union or a contractor has not complied with the job decision or action, then the Joint Board in its discretion may invoke the following compliance procedures:

(a) The Joint Board shall request the labor organization or the contractor to show cause at a specified future date, ordinarily one week, why the Joint Board should not find such International Union or contractor in noncompliance.

(b) If at the expiration of the specified time period, the union or the contractor has not complied or shown good cause for noncompliance, then the Joint Board shall declare the contractor or the International Union in noncompliance.

(c) When the Joint Board has declared an International Union to be in noncompliance, the Joint Board shall continue to examine cases involving such trade. Job decisions which otherwise would be decided against such trade shall continue to be issued. However, no job decision in any case decided in favor of a trade

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declared to be in noncompliance shall be issued pending compliance.

(d) When the Joint Board has declared a contractor to be in noncompliance, the Joint Board shall notify the appropriate contractors' association, if any, and such association shall use its authority and influence to secure prompt compliance. Withdrawal from an association does not relieve a contractor of his responsibility and obligation. When a contractor has failed to comply with a job decision or other action of the Joint Board, the contractor shall be directed by the Joint Board to comply with the action or job decision, as required by his stipulation or agreement.

### **ESTABLISHMENT OF NEW NATIONAL DECISIONS OF RECORD**

1. A request for a national decision in a jurisdictional dispute may be filed with the Appeals Board by any of the International Unions affiliated with the Building and Construction Trades Department or a national participating employers' association. A Hearings Panel shall then be established under Article III, Section 2-4 of the agreement.

2. The Joint Board may at its discretion direct the establishment of a Hearings Panel to establish a national decision in a jurisdictional issue.

3. All General Presidents of National and International Unions affiliated with the Department and all signatory contractors' organ-

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izations shall be notified of the establishment of a Hearings Panel and the issue to be considered. All interested parties shall be permitted to intervene.

4. The Hearings Panel shall make every effort to reach a unanimous decision.

5. The national decision rendered by a Hearings Panel shall be promptly complied with by all parties to the agreement.

### **STATEMENT OF POLICY REGARDING JOINT BOARD DIRECTIVES**

The Procedural Rules and Regulations of the National Joint Board provide for the settlement of a jurisdictional dispute on a specific job by agreement or understanding between the International Unions involved. The rules also contemplate that an assignment of work may be changed by the responsible contractor to conform to the terms of same upon notification by the Joint Board. Such notification shall be made by means of a directive sent to the responsible contractor(s) by the Chairman of the Joint Board.

In order to give effect to the procedure set forth above, and before a directive may be sent to the affected contractor(s) by the Chairman of the Joint Board, the International Unions involved shall submit for the records of the Joint Board the following information:

- I. The date and place of any meeting(s) held in an attempt to settle the jurisdictional dispute and names and affiliations of those present at the meeting(s).



A statement of the exact terms of the agreement or understanding reached and jointly signed by authorized representatives of each of the International Unions involved. If separate communications are submitted by the parties, the terms of the agreement or understanding must be identical in each communication. If variations are found, the parties shall be required to reconcile any such differences, and confirm same in writing, before a directive to the contractor(s) is sent by the Chairman.

II. A statement regarding the notification to the responsible contractor(s) of the agreement or understanding reached. If the contractor(s) or representative of same had not been present at the meeting(s), was he furnished with a copy of the agreement or understanding reached? If objection to agreement or understanding was made by contractor(s) or representative, the nature of the objection must be stated.

III. A copy of the notice or instruction with respect to the agreement or understanding reached as sent by the International Unions to the local unions involved.

In accordance with the Procedural Rules of the Joint Board all directives from Chairman shall be complied with by the affected contractor(s) unless, and within twenty-four hours following receipt of such directive, the contractor notifies the Joint Board that he elects not to comply with the directives and requests

that the jurisdictional dispute be processed for a job decision by the Joint Board. Such decision shall be made forthwith on the merits of the case.

*Effect of Appeal to the Appeals Board*

When an appeal is taken to the Appeals Board from a job decision or interpretation of the Joint Board, such job decision or interpretation shall not take effect until the Appeals Board has acted. If the Joint Board decision or interpretation is modified or reversed, the parties to this Agreement shall immediately comply with the Appeals Board action.

The provisions of Paragraph B(9) (Page 14) and E (Pages 19-20) shall apply to decisions of the Appeals Board in the same manner as they apply to job decisions of the Joint Board.

## **APPEALS BOARD STATEMENT OF PROCEDURES**

The revised machinery for the settlement of jurisdictional disputes in the building and construction industry, as incorporated in the agreement signed February 2, 1965, provides for the creation of an Appeals Board. Article II, Section 5 states in part:

"The Appeals Board is empowered to review and decide any appeal from a decision or ruling of the National Joint Board or a Local Board recognized under Article IV [New York, Chicago and Boston] and such decision of the Appeals Board shall be final. The jurisdiction of the Appeals Board shall be discretionary and it is authorized, subject to the approval of the Joint Negotiating Committee, to prescribe rules as to the types of cases which it will accept for review. No decision of the Appeals Board shall be considered as part of the record referred to in Article III, Sec. 1(c) of this plan. The Appeals Board shall have the authority, subject to the approval of the Joint Negotiating Committee, to establish such procedural regulations as may be required for the effective administration of this appeals procedure. . . ."

The revised procedural rules and regulations of the National Joint Board for the Settlement of Jurisdictional Disputes, as approved by the Joint Negotiating Committee, contain the following section entitled "Effect of Appeal to the Appeals Board":

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**"When an appeal is taken to the Appeals Board from a job decision or interpretation of the Joint Board, such job decision or interpretation shall not take effect until the Appeals Board has acted. If the Joint Board decision or interpretation is modified or reversed, the parties to this Agreement shall immediately comply with the Appeals Board action."**

## **APPEALS BOARD PROCEDURAL REGULATIONS**

The Appeals Board cannot anticipate at the outset of its operations the full range of procedural questions that may arise in carrying out its functions under the revised plan for the settlement of jurisdictional disputes. Subject to the approval of the Joint Negotiating Committee, the Appeals Board presents hereinafter a preliminary statement of its procedural regulations with the understanding that they shall be reviewed and revised in the light of experience, but only in keeping with the plan dated February 2, 1965.

1. No request for consideration of an appeal from a job decision of the National Joint Board or from a recognized plan for local settlement (New York, Chicago and Boston) made after April 1, 1965 may be filed with the Appeals Board while a request for reconsideration or clarification is pending before the National Joint Board or the machinery of such recognized local plan. An appeal may be filed from a job decision or a decision on a request for reconsideration, clarification or a decision fol-

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lowing an oral hearing. Parties may not have proceedings in process in the same case in both the Appeals Board and the National Joint Board or a recognized local board.

2. A request to consider an appeal may be filed with the Appeals Board by the following parties:

- (a) International unions involved
- (b) Contractors involved or directly affected
- (c) National contractor associations with members involved or directly affected

3. A request to consider an appeal shall be filed in writing with the Appeals Board, Plan for Settlement of Jurisdictional Disputes, Building and Construction Industry. The address is 1012 14th St., N.W., Washington, D. C. 20005. Tel. ST 3-0040 (Room 1104).

(a) Any request to consider an appeal from the National Joint Board must be filed no later than three (3) working days after the date of the letter transmitting the decision to the affected parties. Such request shall include a copy of the decision from which an appeal is requested, a statement of the facts and a description of the work operation, with a statement of the reasons for the appeal. (The full file of the National Joint Board shall be available to the Appeals Board.)

(b) Any request to consider an appeal from a recognized plan for local settlement (New York, Chicago and Boston) must be filed no later than five (5) working days after the date of the letter transmitting the decision to the affected parties. Such request shall

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include a copy of the decision from which an appeal is requested, a statement of the facts and a description of the work operation, with a statement of the reasons for the appeal.

(c) Any party filing a request to consider an appeal from either the National Joint Board or a recognized plan for local settlement shall file concurrently a copy of such appeal by wire with each of the (other) contractors involved and each of the (other) unions involved. In this way all interested parties will have simultaneous notice of the appeal. In appeals from Local Board and Joint Board decisions, supporting documents may be forwarded to the Appeals Board by mailing same within one working day after the expiration of the appropriate appeal period.

4. In the case of any petition for an appeal filed from a decision of a recognized local board (New York, Chicago and Boston) the decision of such local board shall be placed into effect before the request for consideration of an appeal is filed. A request to consider an appeal from a decision of the National Joint Board constitutes a stay of such decision.

5. The Appeals Board shall promptly review any request to consider an appeal. It may or may not seek the views of the other involved parties before deciding whether or not to consider the appeal. The plan specifically provides that "the jurisdiction of the Appeals Board shall be discretionary. . . ." If the Appeals Board rejects the consideration of the appeal, the decision of the National Joint Board shall

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promptly be placed into effect. The decision of the recognized local boards shall continue in effect. The rejection of the consideration of an appeal by the Appeals Board is not to be construed as constituting any ruling on the merits of a dispute nor does it prejudice a further request for consideration of an appeal on a similar case in the future.

6. In exercising its discretion as to whether or not to accept a particular appeal, the Appeals Board will give consideration to such factors as the significance of the dispute, the frequency with which such disputes have arisen, the contribution a decision may make to the resolution of disputes and the improvement of relations, and the reasons advanced for considering the appeal. The Appeals Board may not be able as a matter of time to consider all requests for appeal, particularly in its early stages of operation, and accordingly must establish some priority among possible appeals. The Appeals Board is authorized, subject to the approval of the Joint Negotiating Committee, "to prescribe rules as to the types of cases which it will accept for review"; the Appeals Board may establish such types of cases in the future.

7. When the Appeals Board has decided to accept an appeal, it shall promptly set a date for the consideration of the case and notify all involved parties. The Appeals Board shall indicate the date and place of any hearing or specify other procedures it will follow in considering the appeal.

8. The decision of the Appeals Board shall

be communicated to all involved parties; its decision shall be complied with at once.

9. The decisions arising from appeals handled under the procedures outlined above shall apply to the particular jobs involved in the appeal and shall not be considered as a part of the record as defined in Article III, Section 1 (c) of the Plan.

10. All problems of work stoppages or procedural questions regarding assignments of work shall be handled by the Joint Board.

#### *Local Recognized Boards*

The Appeals Board requests each of the recognized local plans for settlement of jurisdictional disputes (New York, Chicago and Boston) to provide full information on procedures and standards used in the making of decisions. The Appeals Board may seek conferences with the recognized local boards to facilitate the handling of disputes and to reduce the number of appeals.

#### *Hearing Panels—National Decisions*

1. Article III, Section 2 of the Plan provides:

"When a dispute is filed with the Appeals Board by a National or International Union, with a specific request for a decision on a national basis which would become part of the record, the Board shall review the request, and if the Board finds it is an issue not already determined on a national basis by a decision or agreement of record, it shall refer the issue to the Impartial Umpire who shall call a con-

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ference of the General Presidents of the Unions involved for the purpose of determining whether or not a national agreement is possible. If an agreement is concluded and properly signed by the contesting parties and attested by the Impartial Umpire, the terms and provisions of the agreement shall remain in effect as per the provisions of the Constitution of the Department. In the event that the dispute cannot be settled by agreement or is not settled by agreement at the end of six months, the Impartial Umpire shall docket the case for hearing and decision by a hearings panel. . . ."

The Plan further provides:

"In negotiating national agreements between international unions, consultation with the appropriate management groups on the making of agreements between international unions is desirable and should be carried on."

2. Article III, Section 5 of the Plan provides:

"The Joint Board may at its discretion and after conference between contesting unions, held by the Chairman of the Joint Board, refer a repetitive dispute which it finds not to be governed by a decision or agreement of record to the Impartial Umpire for mediation and the establishment of a hearings panel and a national decision."

The above Statement was adopted by the Appeals Board and approved by the Joint Negotiating Committee on March 24, 1965.

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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals  
No. 22,073 for the District of Columbia Circuit

FILED OCT 27 1969  
PLASTERERS LOCAL UNION No. 79, *Petitioner*

v.

*Nathan J. Paulson*  
NATIONAL LABOR RELATIONS BOARD, *Respondent*

TEXAS STATE TILE AND TERRAZZO CO.,  
ET AL., *Intervenor*

On Petition To Review and Set Aside and  
Cross-Petition for Enforcement of an Order  
of the National Labor Relations Board

REPLY BRIEF FOR BUILDING AND CONSTRUCTION  
TRADES DEPARTMENT, AFL-CIO, AMICUS CURIAE

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*Of Counsel:*  
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**IN THE**  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

\_\_\_\_\_  
No. 22,073  
\_\_\_\_\_

PLASTERERS LOCAL UNION No. 79, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

TEXAS STATE TILE AND TERRAZZO CO.,  
ET AL., *Intervenors*

\_\_\_\_\_  
On Petition To Review and Set Aside and  
Cross-Petition for Enforcement of an Order  
of the National Labor Relations Board

\_\_\_\_\_  
**REPLY BRIEF FOR BUILDING AND CONSTRUCTION  
TRADES DEPARTMENT, AFL-CIO, AMICUS CURIAE**  
\_\_\_\_\_

The limited purpose of this reply brief is to respond to the argument in the brief for the Union Intervenors which is based on erroneous assertions concerning the nature of the Plan for Settling Jurisdictional Disputes Nationally and Locally (hereinafter, the "Plan")<sup>1</sup>: (1) (brief for union intervenors, p.18) that the Plan is not an inter-union agreement and, therefore, not a method "agreed upon" by the unions involved in the dispute within the meaning

\_\_\_\_\_  
<sup>1</sup> The "Plan" is included in the Department's original brief as Appendix A.

of Section 10(k) of the Act, and (2) (brief for union intervenors, p. 20) that the Plan "was not designed to apply to a dispute which involves an employer who is not a party to the Joint Board agreement, and who is neither obligated nor willing to participate in its proceedings or comply with its decisions."

1. The Plan is unquestionably an agreement among all the Unions affiliated with the Building and Construction Trades Department, AFL-CIO (hereinafter "Department") and their affiliated local unions. This includes the Unions involved in the instant dispute—the Bricklayers and Plasterers International Unions and their affiliated Locals, Tile Setters Local 20 and Plasterers Local 79, respectively.

The Plan was duly adopted by the Department in 1948 on behalf of all its affiliated national and international unions, including the Bricklayers and Plasterers, as the method by which jurisdictional disputes between such unions, and their affiliates, would be resolved. That same year, 1948, the Plan was incorporated in the Constitution of the Department as Section 37, which stated that "Such Plan" "shall be recognized by and binding on all affiliates." This constitutional provision was reaffirmed at the Department's Convention of 1955. Report of Proceedings of the Forty-Eighth Annual Convention of the Building and Construction Trades Department, AFL (1955), pp. 16, 191-192. Article X of the Department's current Constitution, which was included in its present form in the new Department Constitution adopted in 1957 (Report of Proceedings of the Special Convention of the Building and Construction Trades Department, AFL-CIO (1957), p. 54), provides:

All jurisdictional disputes between or among affiliated National and International Unions and their affiliated Local Unions and employers shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the

future by the Department for the settlement of jurisdictional disputes. Said present plan or any other plan adopted in the future shall be recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions.

The constitution and by-laws of an unincorporated association constitute a binding contract among its members, defining not only the privileges received but the obligations imposed upon the members. *International Ass'n. of Machinists v. Gonzales*, 356 U.S. 617, 618-619 (1958); *Parks v. IBEW*, 314 F. 2d 886, 917 (4th Cir. 1963) *cert. denied*, 372 U.S. 976 (1963). The NLRB has long applied this principle to hold that the Plan is "a binding contract" among all affiliates of the Department. *E.G., Lathers Int'l. Union (Acoustical Contractors Ass'n)*, 119 NLRB 1345, 1346-1347 (1958).

2. Since its inception, in 1948, to date, the Plan has been fully operative regardless of whether or not affected employers (i.e. the employers assigning the disputed work) have agreed to be bound to the Plan or to exercise those rights of participation which the Plan affords. This fact, asserted in the Department's original brief (pp. 4, 12-13) and not denied by the brief for union intervenors, is ~~ev-~~  
~~asserted in the Department's original brief (pp. 4, 12-13)~~  
denced by many cases cited in the brief for the NLRB (pp. 15-16 n. 18) in which the Joint Board accepted jurisdiction and rendered decision notwithstanding the lack of stipulation by the contractor. *E.G., United Brotherhood of Carpenters, etc., Local 581 (Ora Collard)*, 98 NLRB 346, 384-349 (1952); *Local 173, Wood, Wire and Metal Lathers' International Union. AFL-CIO (Newark and Essex Plastering Co.)*, 121 NLRB 1094, 1103-1104 (1958); *Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (General Riggers and Erectors, Inc.)*, 127 NLRB 26, 29 (1960); *International Union of Operating*

*Engineers, Local 66 (Frank P. Badolato & Son)*, 135 NLRB 1392, 1395-1396 (1962). See also *Carpenters District Council of St. Louis and Bricklayers Local No. 1 (Gorman Brick-laying Co.)*, 146 NLRB 989, 992 n. 6 (1964) ("The parties agreed that the Carpenters and Bricklayers are bound by decisions of the Joint Board by virtue of their affiliation with the AFL-CIO Building and Construction Trades Department." Gorman, the employer involved, was not stipulated to the Joint Board which, nevertheless, rendered a decision in the dispute.).

During the 21 years of this unvarying practice, the Plan has several times been amended by the parties thereto in other respects, most recently in 1965. The fact that these parties, who are directly involved in and familiar with the Plan's functioning and who have reviewed its operations on a continuing and comprehensive basis, have not changed this practice confirms that the Plan functions in this regard as it is and has always been intended to. Provisions in the Plan reflect a similar intention. Article II, Section 4 of the Plan provides:

It shall be the *duty* of the Joint Board to consider and *decide* cases of jurisdictional disputes in the building and construction industry, which disputes are referred to it by any of the International Unions involved in the dispute, *or* an employer directly affected by the dispute on the work in which he is engaged or by a participating organization representing such employer. (Emphasis added.)

If there were any ambiguities in this language, which we deny, it would be resolved by the administrative practice of 21 years.

It would also seem self-evident that the draftsmen of



Article X of the Department's Constitution, in providing that the Plan should be the method of settling jurisdictional disputes, were referring to the Plan that was in effective operation at that time.

Respectfully submitted,

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SHERMAN AND DUNN

September, 1969

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals  
for the District of Columbia Circuit

FILED SEP 3 1970

No. 22,073

*Nathan J. Paulson*  
CLERK

PLASTERERS LOCAL UNION NO. 79 OPERATIVE PLASTERERS  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO,  
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,  
Respondent,

and

TEXAS STATE TILE & TERRAZZO COMPANY, INC., ET AL.,  
LOCAL UNION 20, BRICKLAYERS, ETC.,  
LOCAL UNION 108, INTERNATIONAL ASSOCIATION OF  
MARBLE, ETC., POLISHERS, ET AL.,  
Intervenors

ON PETITION TO REVIEW AND ON  
CROSS-PETITION TO ENFORCE AN  
ORDER OF THE NATIONAL LABOR RELATIONS BOARD

MEMORANDUM FOR THE MASON CONSTRUCTORS ASSOCIATION  
OF AMERICA IN SUPPORT OF THE PETITION OF THE NATIONAL  
LABOR RELATIONS BOARD FOR REHEARING  
WITH SUGGESTION OF EN BANC CONSIDERATION

1. QUESTION INVOLVED

On June 30, 1970 a majority of the Court's panel over-  
turned 20 years of precedent of the National Labor Relations Board  
and the Federal Courts which have consistently interpreted that  
the National Labor Relations Act requires that the employer in  
addition to the unions involved in a jurisdictional dispute must

have agreed to be bound by an arbitration proceeding before the Board is divested by Section 10(k) of jurisdiction to hear and decide the issue. The majority has held that the unions involved in the jurisdictional dispute can agree on a method for the settlement of such dispute without the employer being a party to such agreement. One of the judges on the panel dissented from the majority opinion which so sharply departs from long-standing Board practice. The Mason Contractors Association of America (herein called "MCAA") fully agrees and relies upon with the interpretation of law and facts set out in Circuit Judge MacKinnon's dissenting opinion.

## 2. IMPORTANCE OF CASE

As stated in the attached Motion for Leave to File this Memorandum members of MCAA have in recent years often been parties to Board proceedings involving jurisdictional disputes. Reference is made to Exhibit A and Exhibit B attached to this Memorandum. Exhibit A sets out decisions of the Board involving jurisdictional disputes where the Board has in each case awarded the work to employees of various MCAA members who are represented by the Laborers' International Union. All of the cases set out on Exhibit A have been decided between December, 1968 and November, 1969. Exhibit B is a list of Unfair Labor Practice Charges that were filed by members of MCAA where disclaimers were issued by various Carpenters Union Locals prior to the date set for a hearing by the Board.

In each of the disputes set out on Exhibits A and B,

the charging party was the employer-mason contractor. It is submitted that the majority's categorization of employers as "neutral" in jurisdictional disputes results from a misconception of labor-management relationship within the construction industry. If the majority decision is allowed to stand, members of MCAA will no longer be permitted to present facts to preserve the work assignments made by them.

A brief review of a typical jurisdictional dispute involving masonry scaffolding may well shed light on the importance of maintaining the employer as a party to all means of resolving jurisdictional disputes. Mason contractors are responsible for fulfilling subcontracts with general contractors for the masonry work on construction projects. Most mason contractors hire only employees who are members of the Bricklayers Union or the Laborers Union. When faced by the claim by the Carpenters Union for the work of erecting and dismantling scaffolding, the mason contractor is faced with a very serious problem, the ultimate result of which may prevent it from being awarded the masonry contract. This result will follow since it will be economically unfeasible for the mason contractor to hire members of the Carpenters' Union for the erection of scaffolding due to the insignificant amount of time spent on this task and the intermittent nature of this work throughout various periods of time during the performance of the subcontract. There would be no other task for the carpenter to perform apart from the scaffolding work and the result would be featherbedding. Members of the Laborers Union, on the other hand, perform other tasks for the mason contractor when they are not engaged in the

erection or dismantling of scaffolding. In addition to efficiency and economy factors such as safety, established trade practice and contractual relationships all support the validity of the mason contractor's assignment. It is submitted that mason contractors have been anything but neutral employers through their vigorous efforts to maintain the integrity of their work assignments. The majority opinion would affect and disrupt a long-standing practice without permitting the members of this association the right to fully present its position to this court.

After enactment of the Taft-Hartley amendments, MCAA was a participating employer-association with the Building and Construction Trades Department, A.F. of L., and participated in a Plan for National Joint Board for the Settlement of Jurisdictional Disputes. Significantly, the Plan (which applied only to the construction industry) specified that:

"It is understood only those contractors who employ members of the organizations affiliated with the Building and Construction Trades Department of the A.F. of L. shall be considered as bound by this agreement when they have signed a stipulation setting forth that they are willing to subscribe and be bound by the terms and provisions of this agreement".

The National Joint Board as established provided for an impartial Chairman with equal representation from employers and the construction unions and it was clearly recognized that the employers were necessary, integral parties to the resolution of jurisdictional disputes. The plan was amended in 1965 and the Amendment was in effect at the time of the events in this case.

In August, 1963, upon notice, the MCAA terminated participation in the Joint Board plan. Concurrent with withdrawal from the Joint Board plan, the MCAA began educational programs whereby it instructed its members on the manner by which they could prevent themselves from being bound to the Joint Board since employer considerations were not being afforded any weight in determinations of the Joint Board. The frustrations encountered by the members of the MCAA in attempting to work through the voluntary procedure of the Joint Board gave them little reason to hope for an impartial result from that tribunal. The record of the Joint Board in connection with jurisdictional disputes concerning the erection of scaffolding has been simply to refer to a April 28, 1920 decision and to reject other factors. The Joint Board considered this decision and this decision alone in complete disregard of its own rules. By failing to take into account the technological advances made since 1920, the Joint Board no longer remained a relevant tribunal to serve the function for which it was established.

The point of the above discussion is to counter the premise of the majority's decision which is that the employer is neutral in jurisdictional disputes and, therefore, needs no protection and need not be a party to settlement agreements between the rival unions. Apart from being in conflict with the statutory provisions and prior case law as pointed out in Judge MacKinnon's dissenting opinion to which MCAA heartily agrees this premise fails to consider the day to day operations of the fragmented, highly competitive construction industry. It may well be that

there are neutral employers to some jurisdictional disputes. This is not and cannot be conceived to be the case in any of the disputes that recently involved MCAA members. The lack of neutrality is grounded upon attempts to minimize costs to retain the integrity of bids to general contractors. Losing control over the selection of the group of competing employees who will perform tasks will ultimately and most certainly result in the displacement of mason contractors from masonry projects which they are presently successful in obtaining as a result of their efficiency of operation. Admittedly, Congress was concerned with protecting the indifferent employer. However, it did not limit determination under Section 10(k) to disputes involving only a neutral and indifferent employer.

The majority opinion's conclusion that the employer is not bound by a 10(k) determination of the Board is only valid in a technical sense. In each of the cases set out on Exhibit A, the employer, under the majority opinion, would have been obligated to accede to the demands of the members of the Carpenters Union or face the economic sanctions (such as picketing) which members of that union could bring against a mason contractor since such activity would not violate Section 8(b)(4)(D). In a very real, direct and economic manner the employer is brought within the jurisdiction of the Board and is irrevocably bound to the determination. Without the participation of employer groups any system developed to resolve jurisdictional disputes will be void of consideration of factors essential for the protection of the general public. Management's essential self-interest in maintaining efficient operations would be transferred to labor organizations ill-equipped and unwilling to perform this function.



There is no argument with the majority opinions approval and understanding of federal labor policy to maintain the efficacy of the arbitration remedy. Boys Market, Inc. v. Retail Clerks Union (62 LC Par. 10,902) - U.S. - (June 1, 1970) represents the most recent pronouncement of the Supreme Court furthering this policy and was advanced by the majority as support for its position herein. In Boys Market, however, there was mutuality of contract between the employer and the union. In our present situation, there is no contravailing force present protecting the interests of the employer when agreements are permitted to be made without the employer's participation.


The instant decision represent an immediate threat to the continued existence of mason contractors. The problems forced upon the construction industry by this decision if it is allowed to stand will result in labor unrest and more jurisdictional disputes which the instant decision purports to avoid.


### 3. CONCLUSION



For the reasons set forth in the dissenting opinion and the reasons set forth in this Memorandum, the Mason Contractors Association of America respectfully requests that the Court grant the Board's request for a rehearing or rehearing en banc and that after such rehearing a judgment issued enforcing the Board's order.

Respectfully submitted,

  
\_\_\_\_\_  
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\_\_\_\_\_  
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# MCAA

## Information

### DECISIONS INVOLVING SCAFFOLDING

The following decisions have been issued by the National Labor Relations Board and the complete data concerning them should be in your copy of the JURISDICTIONAL DISPUTES MANUAL. In each case note that the work has been awarded to employees of the contractor who are represented by the Laborers' International Union of North America.

#### UNITED STATES National Labor Relations Board

1. Carpenters Local 1260 (Seedorff Masonry, Inc.)  
172 NLRB 184 Work awarded to Laborers' Local 1238
2. Jefferson County Carpenters Council (S & W Masonry, Inc.)  
173 NLRB 190 Work awarded to Laborers' Local 599
3. Carpenters Local 753 (Blount Bros. Corp.)  
175 NLRB 81 Work awarded to Laborers' Local 870
4. Carpenters Local 213 (General Masonry, Inc.)  
175 NLRB 101 Work awarded to Laborers' Local 18
5. Newton District Carpenters Council (Porrizzo & Hurley Co., Inc.)  
177 NLRB 36 Work awarded to Laborers' Local 560
6. Carpenters Local No. 200 (Pagura Masonry Contractors, Inc.)  
9 CD 154 - 179 NLRB 36 Work awarded to Laborers' Local 423
7. Carpenters Local No. 7 (Donald Frantz Concrete Construction, Inc.)  
18-CD-81 - 179 NLRB 110 Work awarded to Laborers' Local 563

#### CANADA Ontario Labour Relations Board

1. Carpenters Local No. 18 (Abe Dick Masonry, Ltd.)  
File #17161 (a)-69-JD Work awarded to Labourers' Local 838

EXHIBIT A

Sup. No. 3  
6/1/70

BEST COPY  
from the original

# MCAA

## Information

### DISCLAIMERS INVOLVING SCAFFOLDING

Following are the docketed cases that did not proceed to a hearing as a result of a written disclaimer issued by the Carpenters Union. Work has been done by the employees of the contractor who are represented by the Laborers' International Union of North America.

1. Carpenters Local Union No. 1165  
Case No. 11-CD-1  
Involving Dixie Construction Co., Wilmington, North Carolina
2. Carpenters Local Union 1822  
Case No. 16-CD-65  
Involving C. Delitt Brown Masonry, Ft. Worth, Texas
3. Carpenters Local Union No. 1076  
Case No. 25-CD-66  
Involving Hughes Masonry, Washington, Indiana
4. Carpenters Local Union No. 501  
Cases Nos. 4-CD-199 and 4-CC-504  
East Stroudsburg, Pennsylvania, issued a Disclaimer involving the C. B. Haney Co. on a project in East Stroudsburg, Pennsylvania
5. Carpenters Local Union No. 1036  
Case No. 7-CD-219  
Involving Ebeling & Hicks Co., Romeo, Michigan
6. Carpenters Local No. 213  
Case No. 23-CD-178  
Involving J. E. Roarke Co. on a project in Freeport, Texas
7. Carpenters Local Union No. 1143  
Case No. 30-CD-19  
Involving T. Bakken & Son on a project in LaCrosse, Wisconsin
8. Carpenters Local Union No. 1919  
Case No. 30-CD-20  
Involving F. Taff Inc. on a job located in Stevens Point, Wisc.
9. Carpenters Local Union No. 26  
Case No. 7-CD-226  
Involving Ebeling & Hicks, Inc. on a project in Roseville, Michigan
10. Carpenters Local No. 716  
Case Nos. 8-CD-197 and No. 8-CD-196  
Involving Henry A. Cooke, Jr., Masonry Contractor, Inc. on a project located at New Concord, Ohio

Sup. No. 3  
6/1/70

EXHIBIT B

U.S. DISTRICT COURT OF THE DISTRICT OF COLUMBIA  
COLUMBIA, DISTRICT OF COLUMBIA

JOHN J. HARRIS, JR. vs. ALFRED J. HARRIS, JR.  
ALFRED J. HARRIS, JR., et al.,  
Petitioner

vs. ALFRED J. HARRIS, JR.  
Respondent

ALFRED J. HARRIS, JR., et al.,  
The Respondents

JOHN J. HARRIS, JR. vs. ALFRED J. HARRIS, JR.  
ALFRED J. HARRIS, JR., et al.,  
The Respondents

JOHN J. HARRIS, JR. vs. ALFRED J. HARRIS, JR.  
ALFRED J. HARRIS, JR., et al.,  
The Respondents  
JOHN J. HARRIS, JR. vs. ALFRED J. HARRIS, JR.  
ALFRED J. HARRIS, JR., et al.,  
The Respondents  
JOHN J. HARRIS, JR. vs. ALFRED J. HARRIS, JR.  
ALFRED J. HARRIS, JR., et al.,  
The Respondents

JOHN J. HARRIS, JR. vs. ALFRED J. HARRIS, JR.  
ALFRED J. HARRIS, JR., et al.,  
The Respondents

JOHN J. HARRIS, JR. vs. ALFRED J. HARRIS, JR.  
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The Respondents  
JOHN J. HARRIS, JR. vs. ALFRED J. HARRIS, JR.  
ALFRED J. HARRIS, JR., et al.,  
The Respondents

FILED  
JUL 1 1969

Nathan Paulson

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INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION #450 V SEALAND SERVICE INC. 163 NLRB 18 (1967)	26, 27
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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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NO. 22,073

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PLASTERERS LOCAL UNION NO. 79 OPERATIVE PLASTERERS'  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO  
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

Respondent

and

TEXAS STATE TILE AND TERRAZZO COMPANY INC., ET AL.,  
Intervenors

---

ON PETITION TO REVIEW AND SET ASIDE AND ON  
CROSS APPLICATION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RELATIONS BOARD

---

BRIEF FOR

CERAMIC TILE INSTITUTE OF AMERICA  
WESTERN STATES CERAMIC TILE CONTRACTORS  
SOUTHERN TILE, TERRAZZO AND MARBLE CONTRACTORS' ASSOCIATION  
TEXAS CERAMIC TILE CONTRACTORS ASSOCIATION, INC.  
TILE COUNCIL OF AMERICA, INC.

Amicus Curiae

---

INTEREST OF THE AMICUS CURIAE

Ceramic Tile Institute has 285 tile contracting members in its organization. These tile contractors do at least 90% of the work in their area and hire 90% of the available union tile layers and union helpers in the area.



Western States Ceramic Tile Contractors are composed of 160 tile contracting members and do at least 90% of the work in the area and hire 90% of the available union tile layers and union helpers in the area.

Southern Tile, Terrazzo and Marble Contractors' Association have members in North Carolina, South Carolina, Indiana, Virginia, West Virginia, Kentucky, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Oklahoma and Texas and represent 268 tile contractors using union and non-union tile layers and helpers.

Texas Ceramic Tile Contractors Association, Inc. is composed of 72 tile contractors in the state of Texas, using union and non-union tile layers and helpers.

Tile Council of America, Inc., is composed of the following tile manufacturers: American Olean Tile Company, Inc.; Cambridge Tile Manufacturing Company; Continental Ceramic Corporation; Florida Tile Industries, Inc; Gulf States Ceramic Tile Company; Keystone Ridgeway Tile Company; Lone Star Ceramics Company; Ludowici-Celadon Company; Marshall Tile Inc.; Mid State Tile Company; Monarch Tile Manufacturing Inc.; Pomona Tile Manufacturing Company; Sparta Ceramic Company; Summitville Tiles Inc.; Texeramics Inc.; United States Ceramic Tile Company; Wenczel Tile Company; WesternStates Ceramic Corporation. This membership manufactures approximately 90% of the domestic tile.

An amicus curiae brief is desirable because the tile contractors and Tile Council of America Inc., as movants herein, will discuss, for the information and guidance of this Court (1) some of the substantive merits of this case; (2) reasons why the National Joint Board, through their Plan for Settling Jurisdictional Disputes Nationally and Locally, had no authority to make an affirmative award to the plasterer, and (3)

why the tile contractors are necessary and indispensable parties in any work assignment concerning the tile layer and helper.

STATEMENT OF THE ISSUES

In addition to the three stipulated issues agreed to by the Petitioner, Respondent and Intervenor in the pre-hearing conference, I submit that the following issue

Whether the float coat or setting bed, in the Library and Rainbo jobs, is the "final coat which shall be put on by the tile layer to act as a bed for his tile" per the 1917 agreement of Interstate Mantel and Tile Contractors' Association; Operative Plasterers and Cement Finishers' International Union and the Bricklayers, Masons and Plasterers' International Union of America and re-affirmed February 21, 1924

is so apropos and germane to the review and cross application before this Court, that its omission will make any decision inoperable.

#### STATEMENT OF THE CASE

This case is before the Court after a finding by the National Labor Relations Board (hereinafter referred to as Board), reported at 167 NLRB No. 23 that Plasterers Local Union No. 79 (affiliate of Operative Plasterers and Cement Masons International Association, AFL-CIO, and hereinafter referred to as Plasterers), had engaged in conduct banned by Section 8 (b) (4) (i) and (ii) (D), of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat., 519, 29 U.S.C. Section 151 et seq.), with an object of forcing employers, Martini Tile and Terrazzo Company (hereinafter called Martini) and Texas State Tile and Terrazzo Company (hereinafter called Texas State), intervenors on my motion herein, to assign the work of applying a coat of mortar (referred to in the 1917 agreement between Interstate Mantel and Tile Contractors' Association; Operative Plasterers and Cement Finishers' International Union and the Bricklayers, Masons and Plasterers' International Union of America as the final coat or setting bed) which immediately precedes the bonding agent which adheres the tile, to employees who were members of or represented by Plasterers. Martini and Texas State had traditionally assigned this work to their own employees who were members of or represented by Tile, Terrazzo and Marble Setters Local Union No. 20 (affiliate of Bricklayers, Masons and Plasterers International Union of America and hereinafter referred to as Tile Layers) and their helpers, who are members of or represented by Tile, Marble & Terrazzo Helpers Local Union No. 108 (affiliate of International Association of Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers and hereinafter referred to as Helpers) parties in the proceeding before the Board and intervenors herein on my motion. An unfair labor practice against the Plasterers ensued (reported as 172 NLRB No. 77). Martini and Texas State are members of Tile Contractors Association of America, Inc., intervenor herein on my motion,

who has a national agreement with the two International Unions involved. The local agreements of Martini and Texas State incorporate the work assignment of the national agreement. Tile Contractors Association of America, Inc. is successor to Interstate Mantel and Tile Contractors' Association, a party to the 1917 agreement with the two international unions.

The Plasterers have requested review of the Board's findings and the Board has cross filed for enforcement of its order issued June 27, 1968, pursuant to Section 10 (c) of the Act, this Court having jurisdiction under Section 10 (f) of the Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Section 151, et seq.)

#### DEFINITION OF THE THREE METHODS OF TILE INSTALLATION

In order for this Court to decide whether the Board's determination was valid and proper, it must have before it a clear distinction and definition of the various methods of tile installation as well as the 1917 agreement between Interstate Mantel and Tile Contractors' Association; Operative Plasterers and Cement Finishers' International Union and the Bricklayers, Masons and Plasterers' International Union of America (T-Ex 4, page 32; 104). At the time of the 1917 agreement, there was only one method of tile installation, the conventional method. In 1932 a second method emerged when a patent was granted to H. Bartels by the U.S. Patent Office November 8, 1932 No. 1,887,113 (T-Ex. 5; R. 190). In the 1950s a third method came into being in the thin set method with the advent of a new bonding or adhering agent to stick the tile onto the setting bed or back up.

#### CONVENTIONAL METHOD

This method (R.184) was used prior to 1917 and is still being used today. It is the method referred to in the 'green book' (T.Ex.4, page 32; 104) in the agreement between the two international unions and the tile contractors in 1917 and re-affirmed February 21, 1924.

The four steps are as follows: (R.184-5)

1. A skim coat approximately 1/4" thick, is applied by the plasterer (this work has never been claimed by the tile layer) over rough cement block, hollow tile or metal lath on studs. This coat is SCRATCHED by the plasterer to provide a mechanical bond to the next coat of mortar. This coat may be completely eliminated due to lack of space or economy of cost and still be a conventional method of tile installation.
2. A brown or scratch coat, approximately 1/2" thick, plumbed, rodded and squared, is applied by the plasterer (this work has never been claimed by the tile layer) which is properly SCRATCHED in order to provide a me-

chanical bond for the final setting bed. Because this coat must be properly SCRATCHED, per the 1917 agreement, to guarantee adhesion of the final coat put on by the tile layer, it can only have a PRELIMINARY rod, square and plumb. This coat may be completely eliminated due to lack of space or economy of cost and still be a conventional method of tile installation.

3. A final or float coat of mortar, approximately  $3/8"$  -  $1/2"$  is applied by the tile layer, plumbed, rodded and squared to provide a true and plane surface to act as a setting bed for his tile. When completed, this must be a smooth surface with no areas in excess of  $1/8"$  above or below the required plane in a span of eight feet. The Plasterers have never claimed the right to this setting bed.

4. Onto this float coat or final setting bed is applied a bonding agent (neat cement, which is Portland cement, mixed with water, dry set mortar, adhesive or mastic) varying from  $1/16"$  -  $3/16"$  to adhere the tile. It is not possible to rod, square and plumb a thickness so slight as this, so that the real art of a good tile job rests in the elimination of all surface inequalities in the float coat in Number 3 above.

This method achieves the optimum in quality and appearance.

Please note in Petitioner's brief on page 8 last paragraph, in which it is stated:

"The second coat, as well as the scratch coat, in the conventional method is NORMALLY scratched, that is, lines put in with a scarifier to make a good bond." Emphasis added.

Indeed, the 1917 agreement (T. Ex 4 page 32; 104) between the two International unions and the tile contractor association, recites:

"The (plasterers) shall plumb, rod and square all walls and SCRATCH the same so as to guarantee adhesion of the final coat which shall be put on by

the Tile Layer to act as a bed for his tile."  
Emphasis added.

So, in fact there is no choice for the plasterers, but to scratch the coats which they apply; otherwise, they are in violation of the 1917 agreement. Further, it is impossible to apply a bonding agent and the tile to a SCRATCHED surface and emerge with an acceptable tile installation.

This method is involved in the tile installation in the Library and Rainbo jobs.

#### FLOAT COAT OR BARTELS METHOD

In the one coat float coat or Bartels method, the steps are as follows (R.188; 567; 572).

1. The tile layer applies the float coat or setting bed directly over a hollow clay tile, cement or brick backing with or without metal lath to a thickness of  $3/8"$  -  $1/2"$ . He rods, squares and plumbs to provide a true and plane surface to remove all inequalities. This must be a smooth surface with no areas in excess of  $1/8"$  above or below the required plane in a span of eight feet.

2. Onto this float coat, a bonding agent (neat cement, dry set mortar, adhesive or mastic), is applied, varying from  $1/16"$  -  $3/16"$  to adhere the tile. However, it is not possible to rod, square and plumb a surface this thin, so that the true art of tile setting rests in the proper application of the float coat in No. 1 above.

This method achieves the optimum in quality and appearance with considerable less cost since the PREPARATION of surfaces; namely, the scratch and brown coats of the plasterer have been eliminated and the weight of the walls has been significantly reduced.

This method is involved in the tile installation in the Library and Rainbo jobs.



Please refer to page 8 of Petitioner's brief, first paragraph, where it is stated:

"The mortar setting bed is usually of a uniform thickness of 3/8", 1/2" or 3/4". Emphasis added.

This is totally in error and designed to mislead this Court in its decision. The setting bed of the tile layer cannot ever be UNIFORM in thickness. Remember if the conventional method is used, whereby the plasterer has applied one or more coats of mortar first, he must SCRATCH his final coat to abide by the 1917 agreement, which would make totally impossible a uniform thickness for the setting bed applied by the tile setter. If, as in this method, under description, the plasterer has not applied any coat of mortar, due to lack of space or economy of costs, still the tile setter is applying the mortar to an uneven surface and the thickness of the mortar will necessarily vary over the wall in order to effect a completely plumbed, rodded and squared surface onto which he will ultimately bed his tile.

Further, please refer to Plasterers' brief page 9 in which they state:

"If the walls to which the tile is to be applied are masonry or concrete, as in BOTH THE LIBRARY AND RAINBO JOBS, then in the conventional method the scratch coat would be unnecessary because the backing is already solid. In this situation, the Plasterers would apply the brown coat or plumb coat directly to the masonry walls in the same manner as if the walls were made of studding and had a scratch coat on them." Emphasis added.

Again, the Plasterers forget that their final coat must be SCRATCHED per the 1917 agreement.

Again, the Petitioner would mislead and deceive this Court when they state on page 12 of their brief:

"The agreement and decision provide that the Plas-



terers are to plumb, rod and square the walls and  
SCRATCH THEM IF NECESSARY." Emphasis added.

Let us look at the 1917 agreement. Are there any optional words used in this agreement between the two international unions and the tile contractors with regard to the plasterers scratching the coat of mortar which they install? We think not. The agreement further states WHY the plasterers must scratch their coat - "so as to guarantee adhesion of the final coat." (T. Ex.4; page 32).

If this coat is not scratched, a mechanical bond is impossible between this coat and the coat to be installed by the tile layer and the mortar will fall off of the wall. On the other hand, the bonding agent, which is a thickness of less than 3/16", must be applied to a surface which has less than 1/8" variation in an eight foot span, in order to have a truly satisfactory tile installation.

#### THIN SET METHOD

This is an installation over backings such as marble, glass, stone, plywood, cement block, wall board, hollow clay tile, brick, Portland cement or gypsum plaster or any solid backing where the backing is installed by SOME OTHER CRAFT THAN THE TILE LAYER. Here, the back-up is in the specifications of a general or prime contractor or sub contractor other than the tile contractor. The steps are as follows: (R.193)

1. Any solid backing as named above. There is no final coat of mortar or setting bed, as referred to in the 1917 agreement, in the thin set method.

2. Application by the tile layer of a bonding agent (neat cement, dry set mortar, adhesive or mastic) put on very thinly to adhere, glue or stick the tile in a 1/16" - 3/16" thickness.

This is a cheaper installation and quality is sacrificed since a tile installation is only as good as its setting bed and unless the tile

setter puts on a cement mortar, immediately preceding the bonding agent to adhere the tile, then he has no control over the surface dimensions and the optimum in quality and appearance is sacrificed.

This method of tile installation is not involved in either the Library or Rainbo jobs.

On page 9 of Petitioner's brief, it is stated:

"A new method of installing tile was inaugurated with the discovery by the Tile Council of America of dry-set Portland cement mortars. This method, called the thin setting bed method, allows the tile contractor to set his tiles in a much thinner setting bed than with the conventional method and the bed has greater strength."

And again on page 9 third paragraph, Petitioner states:

"Tiles no longer have to be soaked as they did in the conventional method and it is not necessary to apply a neat cement layer on top of the thin setting bed".

This is a thoroughly erroneous statement to this Court and calculated to mislead it. Please refer to USA Standard Specifications for Ceramic Tile Installed with Water-Resistant Organic Adhesives approved February 14, 1968 United States of America Standards Institute, Appendix 1 herein, page 2, E-2(a).

"The quality and cost of any ceramic tile installation is influenced by the STABILITY, PERMANENCE AND PRECISION OF INSTALLATION OF THE BACKING OR BASE MATERIAL. For this reason the material and recommendations included under "Requirements of Related Trades" should be made a part of the appropriate section of the project specifications either by inclusion or reference therein". Emphasis added.

"Also certain specific operations which may be performed by one or more trades are clearly assigned to one trade in these specifications to establish responsibility and permit uniform bidding."

"If the tile contractor is to perform any of the work herein included in "Requirements of Related Trades", this should be indicated in the "scope"

and the appropriate specifications removed from "related" sections and included in the tile sections of the project specifications".

The Tile Council of America in E-3a page 2 goes further:

"When preparatory work is done by other trades, the tolerances, finishing and other requirements must be included in the applicable trade sections of the project specification. The following material is suggested to the project specification".

The Council then proceeds to set forth for the benefit of specifiers, the tolerances desirable for the crafts doing concrete and masonry and consequently included in the specifications of these contractors; the tolerances desirable where asbestos-cement board, plywood, etc. are installed by carpenters and consequently included in the specifications of the general or prime contractor; the tolerances for gypsum wallboard and thus included in the specifications of these contractors; the tolerances desirable for work done by lathers and plasterers applying gypsum plaster and Portland cement plaster backing and consequently included in the specifications of the lathing and plastering contractor.

You will note on page 4 (b) that where gypsum plaster backing is to be put on by the plasterer to receive tile, it shall be:

"steel troweled, using a brown rich mix of 1 part gypsum cement to three parts sand or hard white-coat"

And further in (c):

"Backing shall be plumb and true and troweled SMOOTH . . . Finish shall have no areas in excess of 1/8" above or below the required plane in a span of 8 feet. ABRUPT IRREGULARITIES SUCH AS TROWEL MARKS, RIDGES AND GRAINS shall be less than 1/32" above the adjacent area".  
Emphasis added.

Further, in Section 2 page 4:

"Where wall tile is to finish flush with plaster, apply steel troweled FLOAT COAT BASE OR PLASTER . .  
.. " Emphasis added.

Again in Section 3b page 4:

"Portland cement PLASTER . . . Backing shall be plumb and true with NO VARIATION exceeding 1/8" in 8'." Emphasis added. . . . steel troweled float coat base of Portland cement plaster . . ."

On Page 5 Section 3a, the guide specifications continues:

"Before installing any ceramic tile or setting beds, the contractor shall inspect surfaces to receive tile and accessories. He shall notify the architect or other designated authority in writing of any defects or conditions that will prevent a satisfactory tile installation. Do not proceed with installation work UNTIL SATISFACTORY CORRECTIONS HAVE BEEN MADE. STARTING OF WORK IMPLIES ACCEPTANCE OF SURFACES TO RECEIVE TILE." Emphasis added.

And continuing on page 6:

"All surfaces shall be DRY, clean, free of oily or waxy films, FIRM, level and plumb." Emphasis added.

"Apply adhesive only in areas which can be covered with tile before the adhesive films over. Remove any adhesive that films over and refloat with fresh adhesive."

May I assist this Court in analyzing what the Tile Council of America is saying in its specification guide regarding ceramic tile installation with water resistant organic adhesives, which is one of the bonding agents that may be used in any of the three methods of tile installation.

The Council emphasizes that the tile installation is only as good as its "backing or base material." This confirms testimony in the record (R.820). The Council specifically sets out the tolerances to which each craft is to adhere to for a satisfactory backing for a tile installation and endeavors to establish responsibility for any deviation to the respective craft installing the back up.

Note, that it refers to the material used by the plasterer as gypsum plaster and Portland cement plaster. This is not the material used by the tile layer; he does not work with plaster materials at all. Further, the tile layer never uses a "brown rich mix or a float coat base of

plaster or Portland cement plaster."

Now I call your attention to the requirement that the plasterer's backing is to be "troweled smooth" and that "abrupt irregularities such as trowel marks, ridges and grains shall be less than 1/32" above the adjacent area." But what does the 1917 agreement say about preparation of walls and ceiling to receive tile and the role of the plasterer? Quoting (T. Ex 4 page 32):

"they (plasterers) shall plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat which shall be put on by the tile layer to act as a bed for his tile."

A priori, then, the tile layer is NOT installing a setting bed over a TROWELED SMOOTH plaster base installed by the plasterer because without SCRATCHING, there would be no adhesion possible of the final coat. Indeed, over a smooth surface, the tile layer's setting bed would fall off the wall. Only the bonding agent, in the form of neat cement, dry set mortar, adhesive or mastic, which is simply something to glue or stick the tile on to the back up, can be applied over a SMOOTH surface. The purpose of the bonding agent is the same in all three methods of tile installation and it is only the bonding agent which has experienced change through the centuries of tile installation (R. 664; 435-6). Thus, in the thin set method, the tile contractor has in his specifications, only the application of the bonding agent or adhesive to the back of the tile. His employees, the tile layer and helper, are simply installing the glue or adhering agent to stick the tile on to the back up installed by another craft and there is NO "FINAL COAT WHICH SHALL BE PUT ON BY THE TILE LAYER TO ACT AS A BED FOR HIS TILE" in this thin set method.

Note also that the tile contractor is warned and cautioned by the Council guide specifications not to proceed with their work if the surfaces installed by other crafts to receive tile are not satisfactorily prepared, and to require that the minimum tolerances be present

before the starting of any work by the tile layer. Difficulties and inadequacies of this type are reflected by tile contractors in the record (R. 712-6; 718-9; 738-9; 750-1; 766; 770; 448; 451; 869; 863)

Note too that the guide specifications state the surfaces must be DRY and FIRM. This is because there are many types of tile which cannot be installed over a wet surface either because of the particular type of tile and its weight or because of the process of beating in of the tile which is required.

Note too, that it is advised that adhesive or gluing should be applied only over the area which can be covered by tile before the glue films over and loses its adhering or sticking properties. This has probably confused the National Joint Board in their zeal to award for the plasterer.

Still the petitioner attempts to mislead this Court by telling you that is is "not necessary to apply a neat cement layer on top of the thin setting bed"(Petitioner's brief page 9 last paragraph). But you can see now that there is no final coat or setting bed in the thin set method, but only a bonding agent, which may be neat cement, among other things, to be installed by the tile contractor and his employees, the tile layer and helper.

No where in these guide specifications will you find a reference to the bonding agent as a setting bed.



#### WHAT IS THE FINAL COAT OR SETTING BED?

This Court must have a clear and precise understanding of the setting bed. It is a coat of mortar, sometimes referred to as the float coat, approximately 3/8" - 1/2" applied by the tile layer, plumbed, rodded and squared to provide a true and plane surface to act as a setting bed for the tile. A tile installation is only as good as the setting bed. (R.820). The setting bed is used to control the lay-out of the tile and to meet doorbucks, window frames, wall fixtures and all other installations. The plumbing, rodding and squaring of the walls and ceilings also control the installation of the floor. The tile setter can control the dimensions (R.232) of the surface to take into account the size of the tile and can plan the size of the tile cuts. The tile setter can compensate for all inequalities of the surface on which he is working and may lay out his tile installation in such a manner so that an artistically perfect job will result (R. 437; 441; 426; 773-5; 780-1; 231). You must remember that the tile is not on the job when the plasterer installs his coat or coats of mortar, so that it would be impossible for him to rod, square and plumb the wall according to the tile cuts necessary for the final installation. Further, per agreement, the Plasterer must scratch his final coat, and the bonding agent and the tile cannot be installed over a scratched surface.

More than 50% of the tile layer's time (R. 566; 442) is spent in the installation of the final setting bed or float coat. The tile setter uses equipment constantly to plumb and true his walls. Primarily he uses a four foot level and a triangulation system (3,4 and 5 or 6,8 and 10) (R. 780; 316; 426). These latter tools are not used by the plasterer, although the Petitioner in their brief on page 8 second paragraph would mislead you to believe that:

"The tools to apply it are identical and the method of application identical."

The tile setter must work to very close tolerance and not produce a surface in the setting bed or float coat which is simply pleasing to the eye, but rather a very true and accurate surface to receive the tile.

There must be no dips, bulges, wiggles on the surface because it will be readily visible when the tile is installed. Ceramic tile, for example, has lugs on the side and there must be a spacing so that an exact 1/16" joint between each tile can be maintained and these joints have to be plumb and perfectly level. Similarly, if a corner is not perfectly plumb so that both walls plumb and intersect exactly, then the corner will show a wide or a narrow band or a change up in the joints. Further, the wall or ceiling must be exactly level because of the glossy or reflective surface of the tile and if it is not, the wiggles, dips or variations will cause objectionable light reflections and will be readily noticeable to the eye and not produce an artistically desirable or agreeable tile installation.

The tile setter guarantees his work when he installs the mortar final setting bed or float coat (R. 436) (Also, T. Ex. 2 - Art V Section 3).

It takes the tile setter 60-65% of his time in the apprentice program (R. 757; 805) to learn to install the float coat or final setting bed, because this is the real art of the craft of tile laying and is his property right and determines the quality of the tile installation.

The final setting bed must be firm or completely dry when the tile is set with the bonding agent (R. 196). The humidity (R. 230; 867-8) is a definite factor, beyond the control of the tile setter, which directly affects the time when the bonding agent may be applied and the tile set (R. 426)

HAVE THERE BEEN ANY CHANGES IN THE SETTING BED THROUGH THE AGES? NO. (R. 424; 664). It is the same 'final coat put on by the tile layer to act as a bed for his tile' referred to in the 1917 agreement (T. Ex.4 page 32) that existed centuries before the 1917 agreement was ever thought of and is being installed today by the tile setter in the same manner and in the same way.

#### WHY ISN'T THE BONDING AGENT A SETTING BED?

Because none of the procedures or inequalities outlined above in the installation of the float coat or final setting bed can be controlled, elim-



inated, or compensated for (R. 193; 435; 563) with the bonding agent since it is of a thickness of only  $1/16"$  -  $3/16"$ . Some of the manufacturers of these new bonding agents, which came onto the market in the late '50s refer to their product as a "bed" (R. 572; 195), but it is not the "final coat which shall be put on by the tile layer to act as a bed for his tile" referred to in the 1917 agreement (T. Ex 2 page 32). It is simply a substance to adhere the tile (R. 838; 435-6) or to butter the tile before it is beat into the final setting bed. Before the late 50s with the advent of the bonding agents, the tile had to be soaked, buttered piece by piece with the bonding agent and applied on the final setting bed. Without this prior soaking, the dry tile would have drawn out the moisture from the mortar setting bed, producing a defective mechanical bond and the tile would fall off the wall. Now, however, since the late '50s with the introduction of the new bonding agents containing retardants, it is unnecessary to soak the tile. Today even with the use of the new bonding agents, it is not possible to apply tile on a wet setting bed because the mechanical bond is broken (R. 426; 432-3; 482-9; 492; 777-9; 772) and the tile will fall off the wall or the courses of tile will be out of line when the tile setter begins to remove the paper from a sheet of tile and to beat the tile into the wall. Customarily, the bonding agent is  $1/16"$  -  $3/16"$  thick and it is impossible to set the true dimensions in this thickness (R. 436.)

The bonding agents, currently in use, came on the market in 1956-7 and are used in all three methods. It is only the bonding agent which has changed through the years and even today neat cement may be still used as this adhesive.

Accordingly, the men who have devoted years of time and effort to acquiring a knowledge of the particular and specific trade of installation of tile, have come to feel that they have an exclusive property right and a job ownership in it since they alone possess the real art of the craft.

## ARGUMENT

### ROLE OF THE NATIONAL JOINT BOARD

Did the National Joint Board follow their own rules of procedure in making the award to the plasterers of the float coat if dry when the tile is applied? According to the Procedural Rules and Regulations of the National Joint Board for Settlement of Jurisdictional Dispute (T. Ex. 1 page 12) the criteria set out to be utilized in making a job decision are:

1. Decisions and agreements of record as set forth in the Green Book (T. Ex 4 page 32) and valid agreements between affected international unions.
2. On pages 2-5, the Contractors Responsibility is clearly set out as follows:

"Where a decision of record applies to the disputed work the contractor shall assign the work in accordance with such agreement or decision of record."

The 1917 agreement (T. Ex 2) between the two international unions and the tile contractors association, predecessor to the Tile Contractors Association of America Inc., are parties to this agreement, which was re-affirmed February 21, 1924, and undeniably defines the "final coat" as the jurisdiction of the tile layer to "act as a bed for his tile." It was this "bed" which the tile layer was installing on the Library and Rainbo jobs, which the plasterer is now seeking to take away from him.

When the National Joint Board clearly states in its award, that the 1917 agreement applies, then it should never have undertaken to make an award, since the language is clear, distinct and precise, and gives the setting bed to the craft of the tile layer.

There is nothing in the 1917 agreement and its reaffirmance February 21, 1924 which says:

- a. When the tile setter or tile contractor put on the tile.
- b. Whether the setting bed is wet or dry.
- c. That tile setter can only float as much surface as he can cover that same day.

We submit then, that the National Joint Board in their rubber stamp decisions concerning this property right of the tile setter which they are attempting to give to the plasterer, have purposely omitted the requirement, per agreement, that the plasterer must SCRATCH any coat that he installs and have inserted the WET requirement, contrary to agreement. Further, we submit that there is substantial evidence in the record that the setting bed or float coat today is exactly the same as that referred to in the 1917 agreement between the two international unions and the tile contractors; consequently, since this work is governed by an agreement published in the green book, then the National Joint Board must make any award consistent thereon.

If the two international unions and the tile contractors wish to change this agreement, then it is their prerogative and not that of the National Joint Board. Indeed, we question their right or ability to interpret the agreement much less to alter, amend, delete or addend the contract. The Building Trades, in their amicus curiae brief for the National Joint Board and the Petitioner, recite the great rapidity with which awards are made by this group and we submit that perhaps a more thorough, patient and painstaking review of disputes submitted to them would yield results less subject to error, necessitating review by administration agencies and an already over loaded court docket.

None of the movants herein are members or participants of the National Participating Specialty Contractors' Association of the "Plan for Settling Jurisdictional Disputes Nationally and Locally" of the Building and Construction Trades Department for the settlement of jurisdictional disputes. See, International Association of Heat & Frost Insulators & Asbestos Workers Local Union #87 & Sam P Wallace Company, 163 NLRB 120 (1967); International Union of Operating Engineers Local Union #450 & Rust Engineering Company, 169 NLRB 149 (1968); NLRB v Teamsters Local Union # 631, 157 NLRB 130 (1966) 403 F.2d 667 (C.A. 9, 1968); New Orleans Typographical Union #17 v NLRB 368 F.2d 753 (C.A. 5, 1966); Electrical Workers Local Union # 369, IBEW and Henderson Electrical Co. 161

NLRB 6 (1966); International Union of Operating Engineers #49 & Egan McKay Electrical Contractors, 164 NLRB 94 (1967); International Union of Operating Engineers #520 and Biebel Bros. & Slate Tile & Composition Roofers Damp & Waterproof Workers Association #2, 170 NLRB 38 (1968)

THE TWO CASES ARE NOT MOOT

It is true the Library job is completed by Texas State. It is NOT true that the remodelling job of Rainbo by Martini is completed. Because of the type of work of the bakery, Rainbo is only able to turn over to Martini limited wall space at a particular time. Consequently, it is a continuing project until the entire bakery is completely tiled.

This rubber stamp award by the National Joint Board to the plasterer began in December 1962 in Baltimore on the Blaustein Building with a member of Tile Contractors Association of America Inc. involved, where the tile contractor, Atlas Tile & Terrazzo Company, had made a work assignment to his employees, represented by the tile layers and helpers. In December 1962, the Minneapolis case occurred, also involving a member of Tile Contractors Association of America, Inc., in which the NLRB in a 10k hearing determined that the work assignment belonged to the tile layer and helper (152 NLRB 148).

Then in succession the National Joint Board, ignoring the determination of the NLRB, made the following awards to the plasterer, all involving member contractors either of Tile Contractor Association of America Inc or of the movants herein:

February 18, 1963 - Capp Towers, Minneapolis - Twin City Tile Company.

February 18, 1963 - Investors Building, Minneapolis, Grazzini Brothers.

February 18, 1963 - County Hospital, New Prague, Minneapolis - Grazzini Brothers.

February 18, 1963 - Dorm #3 East Lansing Michigan - J.B.Tile, Roseville, Michigan.

June 18, 1963 - John Hopkins Childrens Hospital, Baltimore - Quality Tile & Terrazzo Company

August 17, 1966 - St Thomas Hospital - J.F.Bertolini Company, Akron, Ohio

August 31, 1966 - Orthopedic Hospital Addition, Beverly Hills Tile Company, Los Angeles, California

August 28, 1966 - Wilshire Project - Selectile Company, Los Angeles, California.

September 28, 1966 - Modern Language Building, Tucson, Arizona - Tucson Tile Company.

November 23, 1966 - Alcoa Building - San Francisco, California - Superior Tile Company.

January 6, 1967 - Louisiana State University, Baton Rouge, Louisiana - United Tile Company.

February 1, 1967 - New Hospital Job - Mangum, Oklahoma - Fenwicks Material Company.

April 12, 1967 - Sun Valley Shopping Center - Pleasant Hill, California - Superior Tile Company.

April 26, 1967 - St Francis Convent, Sylvania, Ohio - Art Mosaic Tile Company, Toledo, Ohio.

June 21, 1967 - Bank of California - San Francisco, California - Durable Tile Company.

August 30, 1967 - Fairfax High School, Los Angeles, California - Selectile Company.

This constant threat by the plasterers and the National Joint Board to the work jurisdiction of the tile layer and helper, employees of the tile contractors, hinders the tile contractors bidding on specifications, making it impossible for him to accurately and economically bid the job. For if he is to be compelled to use an artisan of another craft, with the resultant corrective procedures and their expense inevitable, then he cannot estimate his cost efficiently and he must escalate his bid to cover the additional costs and subject the economy to further inflation. See, Seattle Building & Construction Trades Council & Voorhees Rig Company & Carpenters District Council & Pile Drivers Local # 2396, 167 NLRB 4 (1967) for awards made though work was completed but not precluded because several similar disputes had arisen between the parties in the past and there was no assurance that such disputes would not occur in the

future, with consequent work stoppages and economic loss to contractors. Also see, Dyer v Securities & Exchange Commission, 266 F. 2d 33 (p.47) cert den 361 U S 835 (1959) where a matter of public interest induced the reviewing court to hold an issue not moot.

There is no change in circumstances from the hearing in the spring of 1967 and a question of vital public interest exists, not only to the tile contractors and their business, but to the tile layers and helpers as well whose very work and future earning capacity is at stake.

#### ROLE OF THE TILE MANUFACTURER

Domestic manufacturers have invested millions of dollars in the design, quality, durability, beauty and excellence of their tile so that their product will be bought and used by the American consumer. This is why the Tile Council of America, membership association of domestic tile manufacturers, has set up rigid standards for ceramic tile installation. It is a protection to the manufacturer that his tile will be properly and correctly installed to display and achieve the quintessence for which it was manufactured. In competition with foreign manufacturers constantly, the domestic manufacturer must be assured of excellence and perfection in installation after these tiles leave his direct control and possession. There are textured, glazed and decorative ceramic tiles today in a broad range of colors and designs. The manufacturer has devoted time, effort and money to achieve consistency in color and uniformity of tile size to bring to the American consumer quality tiles to be installed in imaginative decorative patterns and styles. In addition, the tile manufacturer has devoted time, effort and money to accomplish durability in floor and wall tile so that water will roll away; moisture and steam can't penetrate; acids, stains can't pervade or permeate. The tile manufacturer is competing with wood, glass, vinyl, fabrics, carpeting. Accordingly, the manufacturer must be assured of proper installation and that it will remain as beautiful 10 or even 20 years hence as the day the tile layer completed it. Further the price of the tile installation must be competitive with



these other products and any escalation of costs will significantly deter the use of tile and hasten its replacement with other less expensive materials, all to detriment of the tile manufacturer and their stockholders.

#### ROLE OF THE TILE HELPER

Please note that the Helpers Local Union # 108 was a real party in interest in the proceeding before the NLRB and that Helpers International Union and Helpers Local # 108 were granted full intervention by this Court on my motion September 12, 1968. This international union and its chartered locals throughout the United States work with the tile layer (R. 397; 407) Their function in connection with the tile layer is to handle and distribute all material that may be used by the tile layer after it is delivered to the job. They prepare and mix the mortar for the tile layer (R. 389). They prepare and mix the bonding agent necessary for the sticking of the tile onto the setting bed or the back up in thin sets. They do all the cleaning and grouting of tile after it is installed by the tile layer. Further, they tamp the tile in its installation. They also perform certain non job site functions incident to the duties of the tile layer.

Plasterers do NOT use helpers from this international union, or any of its local affiliates. They work with the laborers international union sometimes referred to as Hod Carriers and specifically with the plaster tender in relation to installation of back up material to receive tile. This constitutes a small percentage of the work of the Plaster tender, in fact, less than 5%. George Brueggerman, President of Tobin & Rooney, testified (R.931) that his firm is one of the larger lathing and plastering contractors in the Houston area and that it would be fair to say that 3 - 5% of thin set tile installations are done by his company where plasterers put on the coat of mortar immediately preceding the bonding agent and the tile.

In contrast, the work of the helper in his relation to the tile layer and installation of the float coat or final setting bed constitute 75-

80% of his total work so that if this honorable Court does not find that the work in dispute, at the Library and Rainbo jobs, is the traditional craft of the tile setter, then virtually thousands of helpers, as well as tile layers will be jobless as they will no longer have the property right to continue in the craft for which they have developed and attained skill.

#### REASONS TILE CONTRACTORS DESIRE TO CONTINUE WORK ASSIGNMENT TO TILE LAYER AND HELPER

Traditionally, tile contractors all over the United States employ the tile layer and helper to install tile. This work assignment has been satisfactory to the tile contractor for the following reasons:

#### SKILL OF THE ARTISAN TILE LAYER

Tile contractors believe that the tile layer is superior to the plasterer, despite the finding of equal skills of the NLRB, in the installation of tile. (R. 184; 565; 571; 589; 653; 666-7; 692-3) The conclusion of superiority has not been hastily formulated. It is predicated on experience with the artisan tile layer and the artisan plasterer. Wherever the back up is a coat of plaster mortar appearing in the plastering and lathing contractor's specifications in a thin set tile installation, then the tile contractor only employs his tile layer and helper to apply the adhering or bonding agent which sticks the tile. This is the trouble area of the tile contractor, because there is rare and infrequent compliance with the *sine qua non* of a successful setting bed installed by an artisan tile layer; namely, no more than 1/8" variation above or below the required plane in a span of 8 feet. This inability of the plasterer to achieve this precise and rigorous standard is largely due to the fact that his working tools do not include a triangulation system (3,4 and 5 and 6,8 and 10), requisites to achieve and perfect a satisfactory back up. In addition, the tile is not on the job at the time the plasterer does his work. He has never seen the specifications regarding it, because it does not concern him. Yet to achieve perfection, Plastering and Lathing contractor George Brueggeman testified (R. 958), it would be



impossible "unless the plasterer knows what the tile system is" because it would be inattainable for him to finish the room properly. Mr. Brueggeman further testified (R. 961) that a coat of mortar to receive tile requires much more exacting dimensions than one which is to be finished to receive plaster. Also, the plasterer, must SCRATCH any coat that he applies, per agreement, and this provides only a preliminary or preparatory plumb, rod and square. See, United Association of Journeymen & Apprentices of Plumbing & Pipefitting Industry of U.S. and Canada 168 NLRB 70 (1967); Operating Engineers Local Union # 450 v Sealand Service Inc. 163 NLRB 18 (1967); International Longshoreman Association L U #1576 and International Longshoreman Association L U #329 and Texas Contracting Co & Galveston Maritime Association 162 NLRB 80 (1968); NLRB v St Louis Printing Pressmen & Assistants Union #6, 385 F 2d 956 ( C.A. 8 1967); NLRB v Local # 991 International Longshoremen Association 332 F. 2d 66 (C.A. 5 1964).

#### GUARANTEE OF THE TILE LAYER AND HELPER

The tile layer and helper unconditionally guarantee their work to the tile contractor (T. Ex 2, Article V Section 3; T. Ex. 3, Article V Section 3). The plasterer makes no such guarantee. Accordingly, there is customarily a vast amount of corrective work (R. 653; 477-8; 451; 863; 869; 712-6; 718-9; 738-9; 750-; 766; 770; 447-8; 451) to be done where the plasterer installs the back up in a thin set.

The tile setter must work to very close tolerance and not produce a surface in the setting bed or float coat which is simply pleasing to the eye, but rather a very true and accurate surface to receive the tile.

By collective bargaining agreement, the tile contractor knows that he is assured of this high level of perfection and achievement by the tile layer.

#### ECONOMIC INTERESTS OF TILE CONTRACTORS

Wage rates of the respective crafts are important to the tile contractor and the bidding of jobs. Please review these current comparative rates:

	<u>T I L E   L A Y E R</u>		<u>P L A S T E R E R</u>	
	<u>HOURLY RATE</u>	<u>FRINGES</u>	<u>HOURLY RATE</u>	<u>FRINGES</u>
Los Angeles	5.56	.955	5.845	1.175
San Francisco	6.30	1.305	6.00 *	1.34 *
Houston	5.25	.10	5.225	.79
Phoenix	5.49	.48	5.62	.615
Philadelphia	5.325	.45	5.385	.33

\*Contract expired June 30, 1969                      Vacation benefits included

	<u>H E L P E R</u>		<u>P L A S T E R   T E N D E R</u>	
	<u>HOURLY RATE</u>	<u>FRINGES</u>	<u>HOURLY RATE</u>	<u>FRINGES</u>
Los Angeles	4.83	.955	5.595	1.175
San Francisco	5.30	.944	5.95 *	1.15 *
Houston	3.50	.10	3.925	.20
Phoenix	4.57	.28	4.85	.40

\*Contract expired June 30, 1969.                      Vaction benefits included

The tile contractors wish to continue their traditional employment of tile layers and helpers, with whom they have a specific work assignment and do not wish to expand to other crafts with the feeling that it would inhibit the continuity of operations without increased efficiency, as well as sacrifice skill of installation, and in some instances increase cost of operation and result in less efficient utilization of employees.

See, Local Union # 132 International Union of Operating Engineers and Pritchard Electric Company and Local Union # 317 International Brotherhood of Electrical Workers, 168 NLRB 58 (1967); Newspaper Guild of New York and New York Newspaper Printing Pressmen's Union Local #2, 171 NLRB 69 (1968); City Transfer Drivers, Helpers, Dockmen & Warehousemen Local Union # 147 & J. Wesley Errett & Firestone Tire & Rubber Company, 169 NLRB 77 (1968); NLRB v International Brotherhood of Electrical Workers Local #3, 339 F. 2d 145, (.C.A. 2, 1968); International Union of Operating Engineers Local Union # 450 & Sealand Service Inc. 163 NLRB 18 1967

INFLUENCE OF THIS DECISION THROUGHOUT THE UNITED STATES ON UNION AND  
NON-UNION EMPLOYEES AND TILE CONTRACTORS

The movants, herein, employ union and non-union employees. This decision will, in effect, set the pattern for tile installation throughout the construction industry in the United States. It will directly effect thousands of employee tile layers and helpers as well as tile contractors who are not before this Court as parties. Should the tile layer lose the installation of the setting bed, which has been his property right, then he will be losing more than 50% of his work. Should the tile layer lose the installation of the setting bed, then the helper will lose 90% of his work. Should the tile layer and helper lose the installation of the setting bed, then the tile contractor will lose up to one third of his business. The lathing and plastering contractor has testified that the loss to him would account for less than 5% of his total work (R. 954). George Brueggeman testified (R. 961) that he would just as soon not have the installation of the coat of mortar preceding the bonding agent and the tile in a thin set method.

While we understand, that the evidence ascertained herein, relates only to the Library and Rainbo jobs, the same award by the National Joint Board has been made to other jobs as well. The facts are the same on other jobsites.

ART OF TILE SETTING

Should the tile layer and helper lose the installation of the setting bed, then the art of the craft of tile laying will be lost completely. The tile layers are the successors to the ancient artisans, through the centuries, of the artistry of tile laying. This is their property right, just as it is the property right of the plasterer to install certain ornamental plastering, which is unexcelled in beauty and artistry and has been their standard of trade jurisdiction and accomplishment through the centuries.

Reduction of the weight of the wall and economy of cost have eliminated the work of the plasterer in preparation of walls to receive tile. It is the same setting bed as a final coat today, to receive the bonding

agent and the tile, as existed through the centuries.

#### CONTRACTUAL SAFEGUARDS TO TILE CONTRACTORS

Tile contractors, having union collective bargaining agreements, have binding arbitration, together with no strikes, stoppages of work or lockouts guaranteed to them (T. Ex 2 Art X; T. Ex 3 Art X). They have no such assurance or contract from the plasterers as there are no national agreements between Operating Plasterers and Cement Masons International Association and contractor associations.

Since every contract today in the construction trade has penalty clauses, the tile contractor is enable to compute his costs more accurately and efficiently.

#### CONTRACTUAL HAZARDS TO TILE CONTRACTORS

Per the protection granted under the Fifth Amendment of the federal Constitution which declares that:

"No person shall be deprived of life, liberty or property without due process of law"

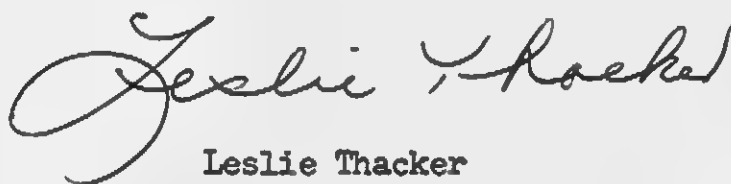
the tile contractors, the two international unions and the two local unions have entered into local and national agreements of record concerning the sale of a man's own labor, the purchase of the labor of others, the work he is to perform per the 1917 agreement and the national and local agreements and certain related work conditions. See, Adair v United States 208 U.S. 161, 28 S. Ct 277, 52 L. Ed. 436.

This liberty or right to contract is subject to the fundamental condition that no contract, whatever its subject matter, can be sustained which the law upon reasonable grounds forbids as inconsistent with the public interests or as hurtful to the public order or as detrimental to the common good. So, it is the liberty or right of the tile contractors to prescribe the terms upon which the services of the tile layer and helper would be acceptable to them and it is equally the right and liberty of the tile layer and helper to become or not, as they choose, an employee of the tile contractors, so long as there is no detriment or hurtful effect to the public good.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for review of the Plasterers should be denied and that a decree should issue enforcing the Board's order in full.

Respectfully submitted,



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Western States Ceramic Tile Contractors

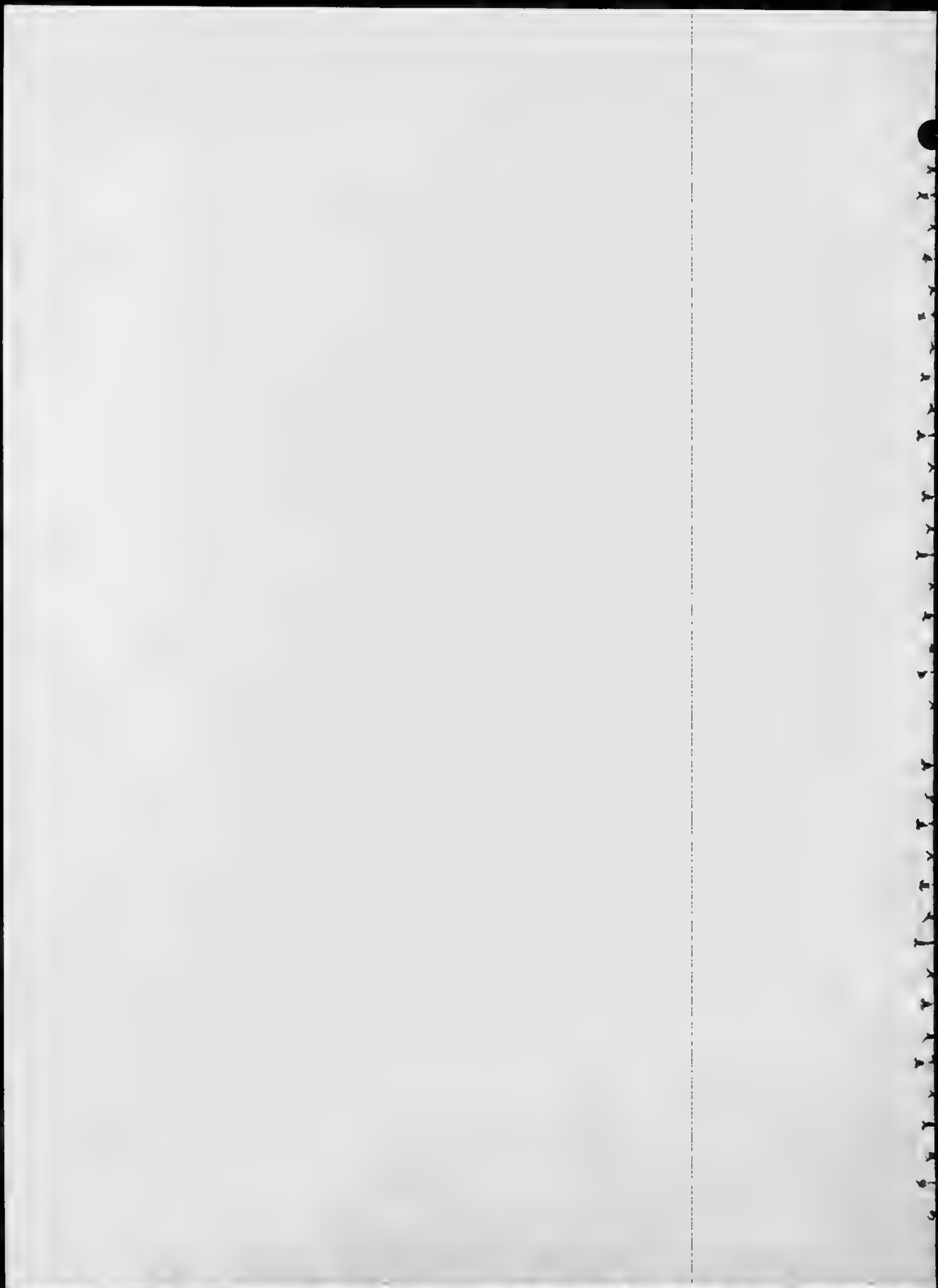
Southern Tile, Terrazzo & Marble Contractors Association

Texas Ceramic Tile Contractors Association Inc.

Tile Council of America, Inc.

July 1969

Amicus Curiae



United States Court of  
for the District of Columbia

FILED OCT 3 1969

*Nathan J. Paulson*  
CLERK

**USA STANDARD SPECIFICATIONS FOR  
CERAMIC TILE INSTALLED WITH  
WATER-RESISTANT ORGANIC ADHESIVES  
A108.4-1968**

**APPROVED FEBRUARY 14, 1968  
UNITED STATES OF AMERICA  
STANDARDS INSTITUTE**

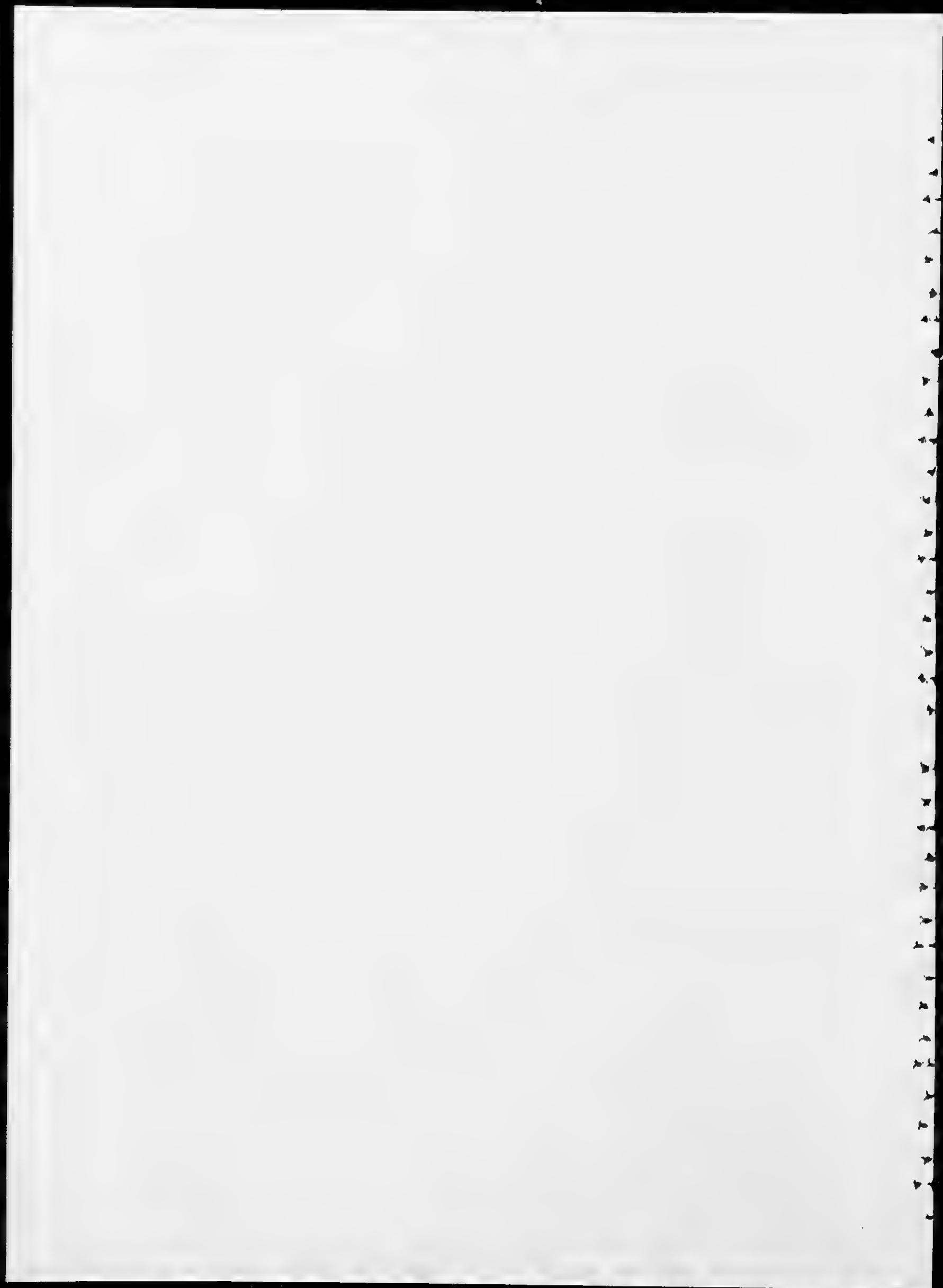
*Including Related Standard:*

**USA STANDARD FOR ORGANIC ADHESIVES FOR  
INSTALLATION OF CERAMIC TILE USAS A136.1-19**

*With Suggested Guide Outline Form for Specifiers*

Sponsor:

 **Tile Council of America** INC.  
800 Second Avenue • New York, N.Y. 10017





## USA STANDARD

A USA Standard implies a consensus of those substantially concerned with its scope and provisions. A USA Standard is intended as a guide to aid the manufacturer, the consumer, and the general public.

The existence of a USA Standard does not in any respect preclude anyone, whether he has approved the standard or not, from manufacturing, marketing, purchasing, or using products, processes, or procedures not conforming to the standard. USA Standards are subject to periodic review and users are cautioned to obtain the latest editions. Producers of goods made in conformity with a USA Standard are encouraged to state on their own responsibility in advertising, promotion material, or on tags or labels, that the goods are produced in conformity with particular USA Standards.

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## FOREWORD E

### EXPLANATION AND NOTES

The following explanation and notes are included as an aid to architects and specifiers on the use of this USA Standard and are not to be copied or considered as part of these specifications.

#### E-1 INTRODUCTION:

a. These specifications for ceramic tile installed with water-resistant organic adhesives may be made a part of a project specification by reference or by copying the applicable parts of the standard and incorporating them into the ceramic tile section of a project specification. In either case the specifier must augment the standard specifications and adapt them to specific project conditions.

b. In an endeavor to simplify the writing of specifications and to conserve writing and typing time, a Suggested Guide Outline Form is included as Appendix B. This form may be photo-copied or otherwise reproduced and used as a guide by the specifier in preparing the working draft when USAS A108.4-1968 is made a part of a project specification by reference. After the working draft has been completed and augmented to fit the project, it may be typed, reproduced and incorporated into the project specification as the section for Ceramic Tile. The Suggested Guide Outline Form is not a part of the standard.

c. USA Standard Specification for Organic Adhesives for Installation of Ceramic Tile, Type I and Type II, USAS 136.1-1967 is attached to USAS A108.4-1968 as Appendix A and is made a part thereof by reference.

#### E-2 GENERAL REQUIREMENTS:

a. **GENERAL:** The quality and cost of any ceramic tile installation is influenced by the stability, permanence and precision of installation of the backing or base material. For this reason the material and recommendations included under "Requirements of Related Trades" should be made a part of the appropriate section of the project specification either by inclusion or reference therein.

1. Also, certain specific operations which may be performed by one or more trades are clearly assigned to one trade in these specifications to establish responsibility and permit uniform bidding.

2. If the tile contractor is to perform any of the work herein included in "Requirements of Related Trades", this should be indicated in the "scope" and the appropriate specifications removed from "related" sections and included in the tile sections of the project specification.

b. **FLOOR DRAINS:** When using floor drains, the slope in subfloor should be provided by trades such as concrete or carpentry and not with the mortar setting bed.

c. **DEFLECTION:** Tile should not be applied over any floor areas with a deflection greater than 1/360 of the span. Allowance must be made for live load and impact as well as all dead load including weight of tile and setting bed.

d. **BACKING MATERIALS FOR WALLS AND CEILINGS:**

The surfaces hereinafter listed are commonly used as backings for wall and ceiling surfaces to receive ceramic tile applied with adhesives. In every case the backing surface must be smooth, sound, clean and dry. Additional precautions, if any, are listed for the individual materials. For materials not listed consult the adhesive manufacturer. Wet locations referred to are showers, tub-shower recesses, or other locations subject to similar wetting conditions.

1. **Portland Cement Plaster:** Install in accordance with USA Standard Specifications for Portland Cement Stucco A42.2-1946.

2. **Formed Concrete.**

3. **Masonry (concrete or clay units):** Walls shall not vary more than 1/8 inch in 8 feet from the required plane. Specify under masonry work section any leveling coats that are necessary to correct irregularities in wall surfaces.

4. **Asbestos-Cement Board:** Prime surface prior to adhesive application. For installation methods, refer to Paragraph E-3c1.

5. **Water-Resistant or Vinyl-Surfaced Gypsum Wallboard:** The material shall be designed and recommended by manufacturer for use in wet areas. Tape, caulk, and seal all cutouts prior to adhesive application in wet areas. Install in accordance with manufacturer's directions and USA Standard A97.1-1965.

6. **Gypsum Wallboard:** Install in accordance with USA Standard A97.1-1965.

7. **Gypsum Plaster:** Install in accordance with USA A42.1-1964. Seal surface prior to adhesive application. For wet areas prepare plaster in accordance with recommendation of Gypsum Association.

8. **Exterior Grade Plywood:** (Recommended in dry areas only.) For installation methods refer to Paragraph E-3c2. Seal surface prior to adhesive installation.

e. **BACKING MATERIAL FOR FLOORS:** The surfaces hereinafter listed are commonly used as backing for floor surfaces to receive ceramic tile applied with adhesive. In every case the backing surface must be smooth, sound, clean and dry. Additional precautions, if any, are listed for the individual material. For materials not listed consult adhesive manufacturer. Ceramic tile floors set with organic adhesives are not suitable for floors subjected to heavy-duty traffic or concentrated loads such as are produced by trucks or carts. For such conditions select another method of installation.

1. **Concrete Slabs, Existing Ceramic Tile and Terrazzo:** Floor surface must be dry, structurally sound and free of wax, curing compounds or other coatings. Slabs in contact with the ground or otherwise subject to the transmission of moisture are not suitable for adhesive-set ceramic tile.

2. **Exterior Grade Plywood:** Seal surface prior to adhesive application. Live load deflection shall not exceed 1/360 of the span. For installation methods, refer to Paragraph E-3c3.

f. **DAMAGE TO TILEWORK:** After completion and cleaning, the obligation of the Tile Contractor ceases as to damage or injury which may be done to the tilework by others.

#### E-3 REQUIREMENTS OF RELATED TRADES:

a. **GENERAL:** When preparatory work is done by other trades, the tolerances, finishing and other requirements must be included in the applicable trade sections of the project specification. The following material is suggested to the specifier for inclusion in the appropriate section of the project specification.

b. **REQUIREMENTS FOR CONCRETE AND MASONRY:**

1. **Cement Floor Finish:** Specify as follows—

"Cement floors to receive ceramic tile applied with adhesives shall be finished level and true with steel trowel. Top of cement floor finish shall not have any areas in excess of 1/16 inch above or below the required plane in a span of 3 feet. Abrupt irregularities such as trowel marks, ridges and grains shall be less than 1/32 inch above the adjacent area. Do not apply curing compounds on concrete floors to receive ceramic tile."

## 2. Curbs and Gutters: Specify as follows—

"Curbs and gutters to receive ceramic tile shall be formed of concrete. After forms are removed, apply portland cement finish to provide correct outline to accommodate the tile thickness plus 1/16 inch. Forms to receive adhesive set ceramic tile shall not be oiled or treated with asphalt. Depress slabs as required for gutters."

## 3. Concrete Ceiling Slabs: Specify as follows—

"Concrete ceilings to receive ceramic tile applied direct thereto with adhesive shall have plywood or pressed wood forms. Do not oil forms or treat with asphalt. The finished concrete ceilings shall not have any areas in excess of 1/16 inch above or below the required plane in a span of 3 feet, and shall be without holes, honeycombing and ridges. Abrupt irregularities such as ridges and grains shall be less than 1/32 inch below the adjacent area. Grind down surface with abrasive if necessary to secure this finish."

## 4. Depressed Slabs: Where finished tile floors are to be flush with adjacent floors, concrete slabs should be depressed the thickness of tile plus 1/16 inch. The dimension for depression as well as the areas to be depressed should be noted on project drawings or designated in project specification.

## 5. Flashing and Drainage: Exterior walls that are to receive tile applied on interior face should be designed to prevent moisture from collecting behind the tilework. This may require flashing, copings, membranes or vapor barriers. Weep holes to obtain adequate drainage at base of walls may also be required.

## c. REQUIREMENTS FOR CARPENTRY:

### 1. Walls and Ceilings of Asbestos-Cement Board: Specify as follows—

- (a) "Asbestos-cement board shall be 1/4 inch thick and conform to Federal Specification SS-S-283a. Apply board horizontally with rough surface out and nail to framing at 8 inch on center along all four edges and 16 inches apart on intermediate supports. Allow a 1/8 inch expansion joint between each sheet. Nail horizontal edges every 8 inches to 2-by-4 inch cats or cross bracing. All corner studs shall be firmly nailed together at bottom, top and at halfway point or bolted at these locations to prevent opening of cracks at corners."
- (b) "Store asbestos board at installation site for time recommended by manufacturer to allow equilibrium to be attained. (Preferred) Prime both sides of asbestos-cement board before installing (or) prime one side at least 16 hours before installing tile."
- (c) "Walls shall be plumb, even and true with variation not to exceed 1/8 inch in 8 feet. Abrupt irregularities shall not project more than 1/32 inch beyond adjacent areas."
- (d) "Where tile wainscots are applied over asbestos-cement board and are required to finish flush with gypsum wallboard or other wall surfacing, asbestos-cement furring strips of required thickness shall be applied over face of studs back of the asbestos-cement board."
- (e) "Flash corners with waterproof sheeting."
- (f) "If necessary, notch studs to receive return of waterproof pan in showers and tub enclosures or fur out studs above pans or tubs."
- (g) "For tubs and prefabricated shower receptors the face of the asbestos-cement board must be at least even with the inside face of the lip of tub or receptor. This may require furring of the studs at least on one wall."

- (h) "Where tile-lined receptors using hot mopped subpans or folded pans are installed, the studs shall be furred or notched in order for face of asbestos-cement board to cover upper edge of subpan. A space of 1/4 inch to 1/2 inch must be left between lower edge of asbestos board and top of tile-lined receptor."

### 2. Walls and Ceilings of Plywood: Specify as follows—

- (a) "Plywood shall be Exterior Type C-C (plugged) (exterior underlayment), or better, conforming to provisions of Product Standard PS 1-66 for Softwood Plywood/Construction and Industrial, and be identified with the grade trademarks of an approved testing agency."
- (b) "Apply 3/8 inch or thicker plywood with direction of face grain perpendicular to studs. Space nails 6 inches on center at panel edges and 12 inches on center at intermediate supports. Allow 1/8 inch expansion joint between sheets. Provide 2-by-4 inch solid blocking between framing members at horizontal edges. (Alternate: Where application of plywood with face grain parallel to studs is desired, use 1/2 inch or greater thickness plywood.)"
- (c) "Prior to installation, seal all plywood edges with a quality exterior primer or aluminum paint."
- (d) "Walls shall be plumb, even, and true with variations not to exceed 1/8 inch in 8 feet. Abrupt irregularities shall not project more than 1/32 inch beyond adjacent areas."

### 3. Floors of Plywood: Specify as follows—

- (a) "Joists shall be not over 16 inches on center with maximum deflection of 1/360 of span."
- (b) "Plywood shall be Exterior Type C-C (plugged) (exterior underlayment), or better, conforming to provisions of Product Standard PS 1-66 for Softwood Plywood/Construction and Industrial, and be identified with the grade-trademarks of an approved testing agency."
- (c) "Where applied over 1-by-6 inch tongue and groove or other structural subflooring, secure 3/8 inch thick plywood to subflooring with 6d ring shank nails; locate nails 6 inches on center at panel edges and 8 inches on centers each way throughout the panel. (Alternate: Where plywood serves as combination subfloor and tile backing, use 3/8 inch Group 1, or 3/4 inch Groups 2 and 3, or 7/8 inch Group 4 plywood with face grain at right angles to joists. Joists shall be spaced 16 inches on center.)"
- (d) "Plywood edges shall be tongue and grooved or solid 2 by 4 inch blocking shall be provided at joints between panels. Nail plywood to joists with 6d ring shank nails located 6 inches on center at panel edges and 10 inches on center at intermediate supports. Set nails 1/16 inch below surface."
- (e) "Allow 1/8 inch between panels and between panel and wall for expansion. Adjacent edges of sheets shall not be more than 1/32 inch above or below each other."

## d. REQUIREMENTS FOR GYPSUM WALLBOARD: Specify as follows—

"Gypsum wallboard shall be installed in accordance with USAS A97.1-1965."

## e. REQUIREMENTS FOR LATHING AND PLASTERING:

### 1. Gypsum Plaster Backing: Specify as follows—

- (a) "All work shall be in accordance with USA Standard Specifications for Gypsum Plastering A42.1-1964 and for Interior Lathing and Furring A42.4-1967."



- (b) "Plaster walls and base to receive tile shall be steel troweled—using a brown rich mix of 1-part gypsum cement to 3-parts sand (or) hard white—coat. (Specify brown or white coat depending upon desire to have tile finish flush with plaster or not.)"
  - (c) "Backing shall be plumb and true and troweled smooth and out of wind. Finish shall have no areas in excess of  $\frac{1}{8}$  inch above or below the required plane in a span of 8 feet. Abrupt irregularities such as trowel marks, ridges and grains shall be less than  $\frac{1}{32}$  inch above the adjacent area."
2. Flush Tile Finish: Specify as follows—
- (a) "Where wall tile is to finish flush with plaster, apply steel troweled float coat base of plaster of correct thickness to allow tile to finish flush with the other finished plaster face."
  - (b) "At junction of cushion-edge tile and plaster finish, when tile are set flush, cut a "V" joint or shallow line of demarcation in plaster. When square-edge tile are used do not cut demarcation unless specified (not required except for appearance)."
3. Portland Cement Plaster Backing: Specify as follows—
- (a) "All work shall be in accordance with USA Standard Specifications for Portland Cement Plastering A42.3-1946."
  - (b) "Backing shall be plumb and true with no variation exceeding  $\frac{1}{8}$  inch in 8 feet."
  - (c) "When wall tile is required to finish flush with plaster, apply steel troweled float coat base of portland cement plaster of correct thickness to allow tile to finish flush with finished plaster face."
  - (d) "At junction of cushion-edge tile and plaster finish, when tile are set flush, cut a "V" joint or shallow line of demarcation in plaster. In case of square-edge tile do not cut demarcation unless specified (not required except for appearance)."
4. Screeds: Specify as follows—
- "Locate screeds at floor, ceiling, top of wainscot and outcorners to insure plumb backing. Corners shall be plumb and square."

#### f. REQUIREMENTS FOR PLUMBING:

Setting of bath tubs should be specified as follows—

"Hang tubs on metal hangers (or) end grain of wood blocks secured to wall construction. Set tubs tight against studs or masonry wall so tile will cover lip of tub. Where tubs are on wood flooring place under front edge, either a single 16-gauge galvanized metal shoe 4 feet long by 6 inches wide or place separate 16-gauge galvanized metal shoes under all points of contact between floor and tub."

#### E-4 NOTES FOR EXPANSION AND CONTROL JOINTS:

- a. LOCATION ON DRAWINGS: The location of control joints and expansion joints, when required, in tilework should be indicated on the project drawings. Details showing joint dimensions and filler and back-up materials should also be shown on project drawings.
- b. INTERIOR WORK: Expansion joints on interior may be omitted on dimensionally stable backings at the discretion of the architect. However, expansion joints in the work should always be provided where expansion or control joints are located in the backing, where tile floors abut rigid walls and in large floor areas 24 to 36 feet where compressive stress may be transmitted to the tilework.
- c. REQUIREMENTS: Control joints are required over all construction or expansion joints in the subfloor; where subfloor materials change; where tilework abuts restraining surfaces

such as perimeter walls, curbs, columns, pipes, etc. and at intervals of 24 to 36 feet each way in large areas of interior tile surfaces. Control joints should also be provided in concrete masonry units that are to receive tile unless other effective measures to prevent cracking of masonry are provided.

#### E-5 NOTES FOR TILE MATERIAL AND ACCESSORIES:

- a. SELECTION OF TILE: Consult tile manufacturers for suitable tile for walls, ceilings and floors and their joint depth and width.
  - 1. Various types and sizes of ceramic mosaic tile, paver tile, quarry tile and some glazed tile are suitable for floors depending on conditions of service. Use only tile recommended for these purposes by manufacturer.
  - 2. All orders to tile manufacturer shall state: "Tile to be adhesive set."
- b. SPECIFYING ADHESIVE: Specify the type of adhesive in accordance with USA Standard for Organic Adhesives for Installation of Ceramic Tile, Type I and Type II. USAS A136.1-1967. This standard is attached hereto as Appendix A.
  - 1. Typical Type I exposures generally include residential, commercial, and institutional showers, tub recesses, floors, kitchen counter tops, ceilings and all interior walls.
  - 2. Typical Type II exposures generally include residential, commercial, and institutional interior walls and residential showers and tub recesses. (For further definition of use-area consult the adhesive manufacturer.)
- c. INSPECTION: If desired, specify inspection or approval of the tile as in Paragraph 21 of USAS A108.4-1968 and the procedure that is to be followed. Inspect and approve tile before installation.
- d. TILE: A full description of each type of tile to be used should be included in project specification. Refer to Paragraph 2b of USAS A108.4-1968.
- e. TILE ACCESSORIES: Accessories should be indicated on the drawings for location and specified in details in the project specification.
- f. GROUTS: Specify the following special grouts when desired or needed—
  - 1. Flexible Grouts: Flexible grouts consisting of elastomeric proprietary materials which are flexible or which make hydraulic cement more flexible and enable it to cure under dry conditions may be used.
  - 2. Non-Staining Grout: On counter-tops, drainboards, and other areas subject to excessive staining action, certain proprietary epoxy or other resin-type grouts which are non-staining and resistant to acids and alkalies may be used.
  - 3. Special Acid-Alkali Resistant Grouts: Some commercial and industrial installations may require special pointing or grouting compounds which will resist prolonged exposure to acids and alkalies. Specify type of grout required. Explicit adherence to manufacturer's directions is mandatory.

*(End of Foreword E—Explanation and Notes)*

# USA STANDARD SPECIFICATIONS FOR CERAMIC TILE INSTALLED WITH WATER-RESISTANT ORGANIC ADHESIVES A108.4-1968

## 1. INTENT:

a. These specifications are intended to describe the minimum requirements of materials and workmanship for ceramic tile installed with water-resistant organic adhesives.

## 2. MATERIALS:

a. **TILE QUALITY AND GRADE:** Tile shall comply with USA Standard Specification for Ceramic Tile A137.1-1967 (equivalent to and incorporating U.S. Dept. of Commerce Simplified Practice Recommendation R61-61 and Federal Specification SS-T-308b, Tile, Floor, Wall, and Trim Units, Ceramic).

1. Tile shall be Standard Grade unless seconds are specified in the project specification.

2. Tile shall be graded and containers grade-sealed in accordance with minimum grade specifications established in USAS A137.1-1967. In addition to the grade seal, Master Grade Certificates will be issued on shipment if requested by the architect before shipment is made. The covering order must show the names of the architect and owner and the name and location of the project.

b. **TILE TYPES, SIZES, COLORS AND PATTERNS:** The types, sizes, colors, patterns, borders, trim shapes, finishes and the required characteristics of ceramic tile shall be as designated in the project specification.

c. **TILE ACCESSORIES:** Accessories shall be glazed ceramic and of types, sizes, shapes, colors, and finishes as described in the project specification. Tile accessories shall be of type suitable for thin setting bed unless otherwise specified.

d. **ADHESIVES:** Adhesives shall conform to all requirements of USA Standard Specification for Organic Adhesives for Installation of Ceramic Tile, Type I and Type II, USAS A136.1-1967 (see Appendix A). Adhesives must also be certified by their manufacturer as proper for the intended application.

e. **UNDERLAYMENT, SURFACE SEALER AND CLEANING SOLVENTS:** Of types as recommended by adhesive manufacturer.

f. **GROUTS:** Grouts shall be of the following types unless other types are included in project specification. Where more than one type of grout is specified for a specific type of tile, the type of grout used shall be optional with the contractor unless designated otherwise:

### 1. Grout For Glazed Wall Tile:

(a) Commercial portland-cement-type "dry-tile" grout for walls, ceilings, and floors. An elastomeric latex additive shall be added to the grout on wood floors and is recommended on all other floors and on asbestos board or styro-foam backups. Use only elastomeric additives recommended by the manufacturer as suitable for this purpose.

(b) Non-portland cement grouts, such as epoxies, silicones and acrylics.

### 2. Grout for Ceramic Mosaic Tile:

(a) Portland cement grout shall consist of 1-part portland cement to 1-part fine sand. For walls and ceilings use white cement and white sand if joints are to be white. An elastomeric latex additive shall be added to the grout on wood floors and is recommended on concrete slabs.

(b) Non-portland cement grouts, such as epoxies, silicones and acrylics.

### 3. Grout for Quarry Tile and Paver Tile:

(a) Portland cement grout shall consist of 1-part portland cement to 2-parts sand. An elastomeric latex additive shall be added to the grout on wood floors and is recommended on concrete slabs.

(b) Non-portland cement grouts, such as epoxies, silicones and acrylics.

g. **PORTLAND CEMENT:** Cement shall conform to USAS A1.1-1967 (ASTM C150-67) Type 1 and be of color designated in the project specification.

h. **AGGREGATE:** Sand shall be clean and graded in accordance with ASTM C144-66T for mortar or for grout as required. Fine sand shall pass a 16-mesh screen when specified.

i. **SEALANT:** Sealant for use in expansion joints, control joints and elsewhere designated in connection with ceramic tile shall be a single-component, synthetic-rubber-base type or a two-component, rubber-base type at the option of the contractor, unless specified or noted otherwise. Color of sealant shall be as approved to match or blend with adjacent materials. It shall have Shore A hardness of 25 for joints in horizontal surfaces with the exception of traffic areas which shall be 35.

1. Single-component sealant shall be a non-sag type complying with Federal Specification TT-S-00230.

2. Two-component sealant shall comply with Federal Specification TT-S-227b; use Type II (non-sag) for joints in vertical surfaces and Type I (self-leveling) for joints in horizontal surfaces.

j. **BACK-UP MATERIAL:** Back-up material for joints to receive sealant shall be a flexible and compressible type as recommended by the manufacturer of the sealant. Furnish material in sizes and shapes indicated by joint details or as recommended by the sealant manufacturer for the size of joint and type of materials. Material shall be non-staining and compatible with the sealants used.

k. **BOND-BREAKER MATERIAL:** Material for bond-breakers, where required for joints to receive sealant, shall be strips of polyethylene tape, wax paper or aluminum foil the same width as the joint.

l. **SAMPLES:** Samples of material as designated in the project specification shall be submitted for approval before delivery to the project site. Installed materials shall match approved samples.

m. **STORAGE OF MATERIALS AT PROJECT SITE:** Deliver and store packaged materials in original containers with seals unbroken and labels intact until time of use. Store and handle materials in a manner to prevent damage or contamination with water or foreign matter.

## 3. GENERAL REQUIREMENTS FOR TILE INSTALLATIONS:

a. **INSPECTION OF SURFACES AND CONDITIONS:** Before installing any ceramic tile or setting beds, the contractor shall inspect surfaces to receive tile and accessories. He shall notify the architect or other designated authority in writing of any defects or conditions that will prevent a satisfactory tile installation. Do not proceed with installation work until satisfactory corrections have been made. Starting of work implies acceptance of surfaces to receive tile.

1. All surfaces shall be dry, clean, free of oily or waxy films, firm, level and plumb.
2. Sub-floor surfaces which vary more than  $\frac{1}{16}$  inch in 3 feet from the required elevation or contain abrupt irregularities of more than  $\frac{1}{32}$  inch are not acceptable.
3. Plane of wall and ceiling surfaces shall be plumb, level and true with square corners. Variations of more than  $\frac{1}{8}$  inch in 8 feet from the required plane are not acceptable.
4. Do not start work until grounds, anchors, plugs, hangers, bucks, electrical and mechanical work in or behind tile have been installed.
5. The tile contractor shall provide satisfactory protection of adjoining work before proceeding with tile installation.
6. Do not set tile on gypsum wallboard backing unless it is installed and prepared in accordance with USA Standard A97.1-1965.

#### b. PROTECTION AND SAFETY REQUIREMENTS:

1. Spaces in which tile is being set shall be closed to traffic and other work. Keep closed until tile is firmly set. Protect tile from damage until acceptance.
2. Tile may be set at low temperatures with adhesives; consult manufacturer of adhesives for specific temperatures. Maintain a temperature of 50°F or above during installation and curing of cement grouts.
3. Provide and operate safety spark-proof fan when natural ventilation is inadequate.
4. Smoking is prohibited when using adhesives containing inflammable volatile solvents.
5. Do not walk or work on newly tiled floors without using kneeling boards.

#### c. WORKMANSHIP, CUTTING AND FITTING:

1. Install tile in a manner conforming with the best current practice of the industry.
2. Do not make an excessive amount of cuts. Usually, no cuts smaller than half size should be made, and areas of tile shall be centered and balanced. Make all cuts on the outer edges of the field.
3. Smooth all cut edges with a carborundum stone, and install no tile with jagged or flaked edges.
4. Fit tile closely where edges will be covered by trim, escutcheons or other similar devices.
5. The splitting of tile is expressly prohibited except where no alternative is possible.
6. Maintain the heights of tilework in full course to the nearest obtainable dimension where the heights are given in feet and inches and are not required to fill vertical spaces exactly.
7. Make corners of all tile flush and level with corners of adjacent tile, with due allowance to warpage tolerances for tile as specified in USAS A137.1-1967.
8. Keep all joint lines straight and of even width, including miters.
9. Finish floor and wall areas level and plumb within  $\pm \frac{1}{8}$  inch of true plane in 8 feet.
10. Install accessories in tilework so that they are evenly spaced, properly centered with tile joints, and are level, plumb and true to the correct projection. Install accessories at locations and heights designated.
11. The finished tilework shall be clean and free of tiles which are pitted, chipped, cracked or scratched.

#### d. SURFACE SEALER AND SEALANT:

1. Seal around all pipes and conduits which go through backing; use sealant as specified.

2. When priming porous surfaces such as gypsum plaster, asbestos-cement board and plywood, use primer recommended by the adhesive manufacturer as proper for the particular backing and compatible with the adhesive.

#### e. JOINT WIDTHS:

1. When tile are not self-spacing, maintain uniform joints, plumb, true, and even and in accordance with the following widths:

Mounted tile $2\frac{3}{16}$ inches square or smaller . . . . .	$\frac{1}{32}$ to $\frac{7}{64}$ inch
Mounted tile over $2\frac{3}{16}$ inches square . . . . .	$\frac{1}{16}$ to $\frac{1}{4}$ inch
Unmounted unglazed tile from $2\frac{3}{16}$ to $4\frac{1}{4}$ inches square . . . . .	$\frac{1}{16}$ to $\frac{1}{4}$ inch
Unmounted unglazed tile 6-by-6 inches and over . . . . .	$\frac{1}{4}$ to $\frac{1}{2}$ inch
Quarry tile unmounted . . . . .	$\frac{1}{4}$ to $\frac{1}{2}$ inch
Glazed tile 3 inches square and over . . . . .	$\frac{1}{16}$ to $\frac{1}{4}$ inch
Faience tile in all sizes . . . . .	$\frac{1}{8}$ to $\frac{1}{2}$ inch

#### f. PREPARATION FOR GROUTING:

1. Carefully and completely remove all adhesive from front of edge and face of tile. Use only solvents recommended by adhesive manufacturer. Avoid use of excess solvent. Ventilate and take fire precautions as recommended by the adhesive manufacturer. Allow a minimum of 24 hours for evaporation of solvent before grouting unless otherwise recommended by the adhesive manufacturer.
2. After the paper has been removed from ceramic mosaics make certain that all glue is removed before applying grout.

#### g. GROUTING AND CURING TILE:

1. If strings or ropes were used to space tile, remove before grouting but not until mortar has set.
2. (a) Follow proprietary grout manufacturer's directions and damp cure as needed to produce a hard grout.  
(b) Thoroughly soak glazed wall tile before grouting with ordinary portland cement grout.
3. Remove all glue from face of ceramic mosaics before grouting.
4. Force maximum of grout into joints. Use grout of type and mix as hereinbefore specified and follow grout manufacturer's directions explicitly. (Refer to Paragraph 2f.)
5. Before grout sets, strike or tool the joints of cushion-edge tile to depth of cushion. Fill all joints flush with surface of square-edge tile.
6. Fill all gaps and skips. The finished grout shall be uniform in color, smooth and without voids, pin holes or low spots.
7. Sponge and wash tile thoroughly, diagonally across joints. Finally polish with clean, dry cloths.
8. Fill expansion and control joints with sealants and back-up material as hereinbefore specified. Refer to Paragraphs 2i, 2j and 3h.
9. Cure portland cement grouts by keeping damp for at least 72 hours. Cure Dry-Set grouts used on exteriors, for floors or in wet locations by keeping damp for at least 72 hours. Add dampness as needed. Covering with polyethylene sheeting facilitates curing of grout.

**h. EXPANSION AND CONTROL JOINTS:** Expansion and control joints in tilework shall be provided at locations indicated on the project drawings. Unless otherwise indicated on the project drawings or modified by the project specification, expansion and control joints shall be treated as follows:



1. Expansion joints shall extend completely through tile and adhesive. Width of joints same as width of normal tile joint except for spacer tile, where abutting other materials or on exteriors. For spacer tile double width of joints or grind or pinch off lugs. Where tile abuts other material or on exteriors, the expansion joints should be at least  $\frac{1}{8}$  inch but not less than joint width.
2. During installation protect expansion joints to prevent filling with mortar, grout or dirt.
3. After tile is grouted, fill the completely dry and clean expansion joints with the specified expansion joint sealant. Remove excess and clean tile. For quarry tile, paver tile and other thick tile use back-up material or pre-formed expansion joint filler in accordance with sealant manufacturer's directions.
4. To facilitate cleaning, strips of pressure-sensitive adhesive tape may be applied to tile at edge of joints to be caulked. Remove tape after caulking is dry.

#### i. CLEANING TILE:

1. Do not use acid or acid cleaners to clean glazed tile.
2. Acid cleaning of unglazed tile shall not be done before 10 days after setting. Wet tile with water before cleaning with sulfamic acid and follow directions of the acid manufacturer. Protect all metal and enameled iron with grease. Flush thoroughly with water after acid cleaning.

#### j. PROPRIETARY AND TRADE-MARKED MATERIALS:

Mix and use in strict accordance with manufacturer's directions unless otherwise specified herein or in the project specification.

### 4. INSTALLATION OF CERAMIC TILE FOR WALLS AND CEILINGS:

#### a. GENERAL:

1. Installation of tile for walls and ceilings shall also include base, wainscots, window stools, reveals, wall breaks and accessories where required. Application is over gypsum wallboard, gypsum plaster, portland cement plaster, smooth dry concrete, exterior type plywood or asbestos-cement board.
2. Refer to Paragraph 3 "General Requirements for Tile Installations" for items applicable to wall and ceiling installations.

#### b. PREPARATION OF SURFACES:

1. Preparation in Dry Areas: When sealing porous surfaces such as gypsum plaster, asbestos-cement board and plywood, use primer recommended by the adhesive manufacturer as proper for the particular backing and compatible with the adhesive.
2. Preparation in Wet Areas: (Wet areas are showers, tub recesses, or other areas subject to similar wetting conditions.) Inspect gypsum wallboard surfaces to assure that they are installed in accordance with USA Standard A97.1-1965 and with the details shown in Figure 1 and Paragraphs (a), (b), (c) and (d) below. Do not apply tiles to surfaces that are not properly installed.
  - (a) The paperbound edge of the wallboard must be spaced a minimum of  $\frac{1}{4}$  inch above the tub or receptor lip.
  - (b) Corners, joints and cutouts shall be taped and caulked and nails shall be taped and treated.
  - (c) Scraps and small pieces of wallboard are not permitted.
  - (d) Prior to the erection of surfacing materials a water-resistant type of sealer, compatible with the adhesive and as recommended by the adhesive manufacturer, shall be applied to all gypsum wallboard areas including treated joints and angles which are to receive such surfacing materials. When the adhesive is used as a sealer, it shall be applied as a separate operation, independently of the application used to adhere the surfacing material, spread

### INSTALLATION DETAILS

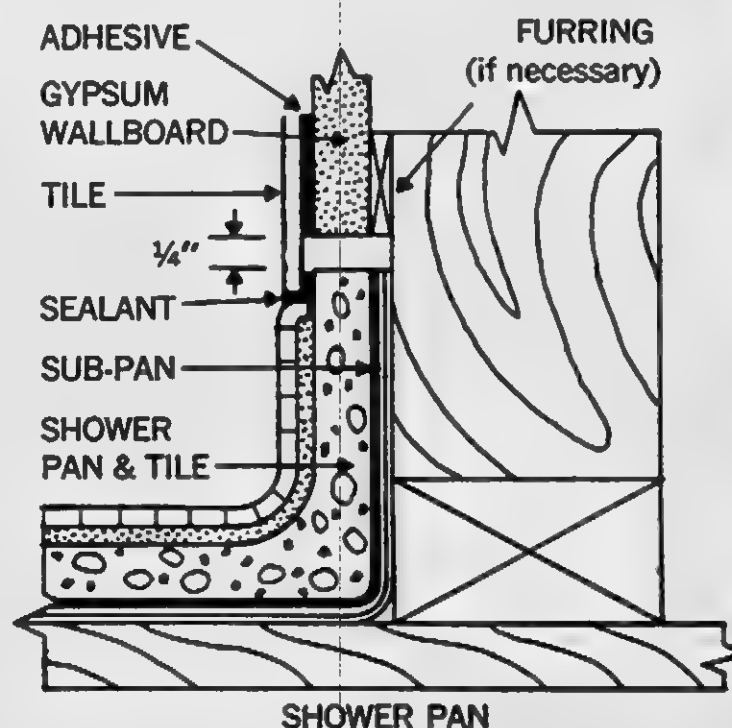
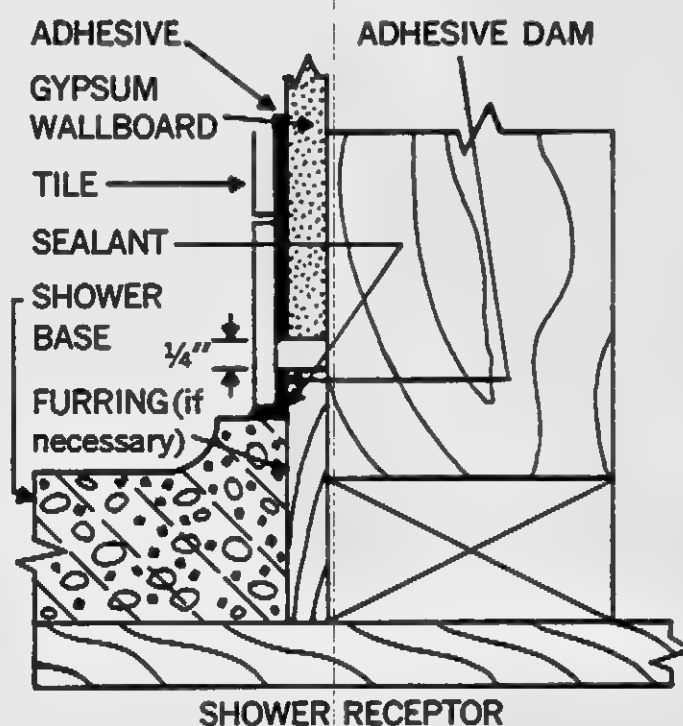
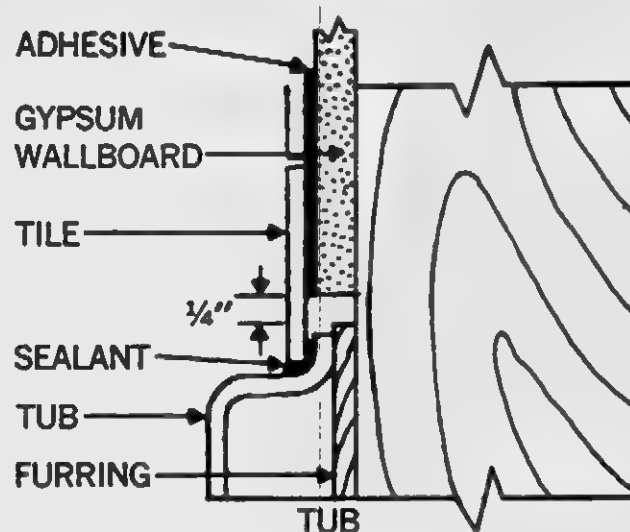


FIGURE 1

in a continuous coating approximately  $\frac{1}{16}$  inch thick and allow to dry. All edges of cut-outs made in the gypsum wallboard for pipes, fixtures, etc., shall be taped and sealed in a like manner.

- (e) If water-resistant gypsum wallboard or vinyl-surfaced backer board is used, follow manufacturer's directions for sealing in lieu of sealer coat specified in Paragraph (d) above.

**c. ADHESIVE APPLICATION:**

1. Spread adhesive on surface to be tiled with notched trowel of type as recommended by the manufacturer for the surface and type of tile. Cover surface uniformly with no bare spots. Apply adhesive only in areas which can be covered with tile before the adhesive films over. Remove any adhesive that films over and refloat with fresh adhesive.

**d. SETTING TILE ON WALLS AND CEILINGS:**

1. Press individual tile or sheets of tile into the adhesive, using care to maintain accurate joint alignment and spacing.
2. Beat-in tile with a rubber-faced beating block to obtain maximum contact between the tile backs and adhesive. The average contact area of adhesive on tile or tile assembly removed for inspection shall be 75 per cent or more and no individual tile or tile assembly shall have less than 40 per cent coverage of adhesive.
3. Remove paper and glue from paper-mounted ceramic mosaics before the adhesive is firmly set and align individual tile as required.
4. Grout tile as hereinbefore specified. The type and color of grout for the kinds of tile used shall be as hereinbefore specified unless otherwise designated in the project specification or approved by the architect. Refer to Paragraphs 2f and 3g.
5. After grouting has stiffened, clean tile as hereinbefore specified. Do not use acid solutions for cleaning glazed tile. Refer to Paragraph 3i.

**5. INSTALLATION OF TILE FOR FLOORS AND COUNTERTOPS:**

**a. GENERAL:**

1. Installation of tile for floors and countertops is intended for application over cement or wood backing and shall include curbs, gutters and saddles.
2. Refer to Paragraph 3, "General Requirements for Tile Installations" for items applicable to floor and countertop applications.

**b. PREPARATION OF SURFACES:**

1. Patching and underlayment shall be provided on surfaces to receive tile when so specified in the project specification or otherwise designated. The type of underlayment material and the application shall be as recommended by the adhesive manufacturer.
2. Apply primer-sealer as recommended by the manufacturer of the adhesive used to all wood and plywood subfloors.
3. Lay out expansion joints as detailed or specified.

**c. ADHESIVE APPLICATION:**

1. Spread adhesive on surface to be tiled with notched trowel of type as recommended by the manufacturer for the surface and type of tile. Cover surface uniformly with no bare spots. Apply adhesive only in areas which can be covered with tile before the adhesive films over. Remove any adhesive that films over and refloat with fresh adhesive.

**d. SETTING TILE-FLOORS AND COUNTERTOPS:**

1. Press individual tile or sheets of tile into the adhesive, using care to maintain accurate joint alignment and spacing.
2. Beat-in tile with a rubber-faced beating block obtain maxi-

mum contact between the tile backs and adhesive. The average contact area of adhesive on tile or tile assembly removed for inspection shall exceed 95 per cent and no individual tile or tile assembly shall have less than 75 per cent coverage with adhesive.

3. Remove paper and glue from paper-mounted ceramic mosaics before the adhesive is firmly set and align individual tile as required.
4. Grout tile as hereinbefore specified. The type and color of grout for the kinds of tile used shall be as hereinbefore specified unless otherwise designated in the project specification or approved by the architect. Refer to Paragraphs 2f and 3g.
5. After grouting has stiffened, clean tile as hereinbefore specified. Do not use acid solutions for cleaning glazed tile. Refer to Paragraph 3i.
6. Protect grouted floors for at least three days from drying out with a layer of bituminous building paper lapped 4 inches and sealed against escape of moisture (or) with a polyethylene film. Keep traffic off floor during this curing period. If self-curing grout is used, follow the manufacturer's printed recommendations.

*(End of USA Standard A108.4)*



## APPENDIX A

# USA STANDARD FOR ORGANIC ADHESIVES FOR INSTALLATION OF CERAMIC TILE

**TYPE I—Organic Adhesives for Installation of  
Ceramic Tile in Interior Areas  
Requiring Prolonged Water Resistance**

**TYPE II—Organic Adhesives for Installation of  
Ceramic Tile in Interior Areas  
Requiring Intermittent Water Resistance**

**Sponsor: THE ADHESIVE AND SEALANT COUNCIL, INC. (AC-A-6203B—Adopted March 1, 1966)**

Approved May 16, 1967—United States of America Standards Institute

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## 1. Purpose

1.1 The purpose of this standard is to serve as a guide to manufacturers of organic adhesives, tile producers, installing contractors, architects and testing laboratories in producing, specifying and testing organic adhesives for the installation of ceramic tile. It provides a basis for ensuring the quality of organic adhesives and is not intended as an application specification.

## 2. Scope

2.1 It is recognized that there are varying degrees of water resistance required in ceramic tile installations. Applications involving continuous water immersion, chemical resistance and similar conditions may not be satisfied by products meeting this standard and therefore such applications should be referred to the manufacturer and considered upon an individual basis.

2.2 This standard covers organic adhesives for the installation of ceramic tile in interior areas requiring prolonged water resistance and interior areas requiring intermittent water resistance and specifies minimum requirements and methods of test for stability in storage, shear strength at intervals of time; shear strength under accelerated aging; impact; resistance to mold growth and resistance to stain. It includes requirements for manufacturers' instructions for installation and labeling.

2.3 The quality of ceramic tile adhesives is determined by both strength and durability. This standard ensures improved flexibility and aging characteristics while maintaining more than adequate strength of bond.

2.4 The methods used to prepare test specimens for the various strength requirements of this standard result in a bonded area of 50±5 per cent of the tile surface. This factor is considered in evaluating the strength of adhesives tested under this standard.

2.5 This standard covers only organic adhesives in single package units ready for use.

## 3. Classification

Type I - Organic Adhesives for Installation of Ceramic Tile in Interior Areas Requiring Prolonged Water Resistance.

Type II - Organic Adhesives for Installation of Ceramic Tile in Interior Areas Requiring Intermittent Water Resistance.

## 4. Definitions

4.1 Ceramic tile, for purposes of testing under this standard, shall be a nonribbed flat-backed ceramic tile as described under 6.2.1.1.

This tile is available from The Adhesive and Sealant Council, 1410 Higgins Road, Park Ridge, Illinois 60068.

4.2 For the purposes of this standard, the term "organic adhesives" shall include any adhesive in which organic material is used as the principal bonding component.

## 5. Requirements

5.1 Stability in Storage. After four (4) weeks storage under accelerated conditions as specified in 6.1, the adhesive shall not change appreciably in volume or viscosity, shall not segregate in such a manner that it cannot be readily restored by hand-mixing with a paddle for not more than ten (10) minutes; and shall have substantially the same working qualities as another sample of recent manufacture as obtained from the manufacturer at that time, strictly for the purpose of comparison.

5.2 Shear Strength. When the adhesive is tested, in accordance with 6.2, it shall comply with the following requirements of shear strength:

5.2.1 Shear Strength, Room Temperature, Dry. Not less than 40 lbs. per square inch when tested at a temperature of 73.4±3.6°F (23±2°C)\* in accordance with the method described in 6.2.3.1.

## 5.2.2 Shear Strength, Room Temperature, after Water Immersion.

Type I - Not less than 40 lbs. per square inch when tested at a temperature of  $73.4 \pm 3.6^\circ\text{F}$  immediately after immersion in water for seven (7) days in accordance with the method described in 6.2.3.2.

Type II - Not less than 20 lbs. per square inch when tested at a temperature of  $73.4 \pm 3.6^\circ\text{F}$  twenty (20) hours after final immersion in water of the last cycle in accordance with the method described in 6.2.3.2.

## 5.2.3 Shear Strength, Room Temperature, after 28 Days Air Drying.

Not less than 40 lbs. per square inch 28 days after bonded and conditioned in an atmosphere of 50% R.H.  $\pm 5\%$  and at a temperature of  $73.4 \pm 3.6^\circ\text{F}$  when tested in accordance with the method described in 6.2.3.3.

## 5.2.4. Shear Strength after Accelerated Aging.

Not less than 75% of the actual shear strength computed and reported under 5.2.1 when tested in accordance with the methods under 6.2.3.4, i.e., if 100 lbs. per square inch average is obtained under 5.2.1, at least an average of 75 lbs. per square inch must be obtained under 6.2.3.4. However, in no case shall the shear strength after completion of the accelerated aging test be lower than 40 lbs. per square inch.

## 5.3 Heat Resistance.

Not less than 10 lbs. per tile assembly when tested at  $120 \pm 2^\circ\text{F}$  in accordance with the method described in 6.2.3.5.

## 5.4 Impact Test.

All tiles must remain bonded after impact test is performed in accordance with the method described in 6.2.3.6.

## 5.5 Stain Test.

Staining shall not exceed 70% penetration of the thickness of the tile tested in accordance with the method described in 6.3.

## 5.6 Resistance to Mold Growth.

The adhesive shall not support mold growth, when tested in accordance with the method described in 6.4.

\*NOTE: This standard atmospheric temperature is specified by A.S.T.M. Committee D-14 on Adhesives.

## 6. Methods of Testing

### 6.1 Stability in Storage.

Two containers of at least one (1) gallon each of the bonding adhesive, obtained at the same time and having the same lot or batch number, shall be tested as follows:

The two one (1) gallon containers shall be stirred until homogeneous and quickly repacked into eight (8) one (1) quart triple-tight cans to avoid loss of volatiles. Four quarts shall be stored for a four (4) week period - two (2) weeks at a temperature of  $35 \pm 2^\circ\text{F}$  and two (2) weeks at a temperature of  $120 \pm 2^\circ\text{F}$ . Any significant evidence of change in volume or viscosity shall be observed.

At the end of the last storage period, after the containers have attained room temperature, if there is any evidence of segregation, the bonding adhesive shall be hand-mixed with a paddle for not longer than ten minutes. The bonding adhesive, in the container inspected at the end of the four (4) week storage period after mixing, shall be compared with a sample of recent manufacture.

The remaining four (4) quarts shall be used as in 6.2.1.2.

## 6.2 Shear Strength.

### 6.2.1 Materials.

Materials used for testing methods specified herein shall be as follows:

#### 6.2.1.1

The ceramic tiles shall be standard test tiles without lugs, flat-backed (no ribs),  $4\frac{1}{4}'' \times 4\frac{1}{4}''$  having a nominal thickness of  $5/16''$ , glazed with a glossy white glaze with a minimum of five (5) mils in thickness and having a water absorption of 13-15 per cent, according to ASTM C-373-56.

#### 6.2.1.2

The bonding material shall be the commercial product transferred into one (1) quart cans, as outlined under 6.1. Lids shall be kept tightly closed at all times when not in use.

#### 6.2.1.3

The template used in applying the bonding adhesive shall be made of polytetrafluoroethylene\* of  $.0625 \pm .002$  inch thickness and shall conform to the exact measurements as shown in Figure 1.

\*Such as "Teflon", a product of DuPont.

6.2.1.4 The oven used throughout this specification shall be a mechanical convection type such as the Thelco Model 18, or equivalent; provided with lattice-type shelves. The heating element shall be external to the oven chamber with air circulation dependent upon the movement of warm air provided by a turbo blower, and directed and circulated through diffuser plates. See Figure 3.

6.2.1.5 Spacers. Spacer rods shall be made from straight high-carbon steel "drill rod". They shall have a diameter of  $0.03125'' \pm .001''$  and shall be two inches in length.

6.2.1.6 Storage prior to test. All materials mentioned herein, for the purpose of conducting the following tests, shall be stored in an atmosphere of 50% R.H.  $\pm 5\%$  and at a temperature of  $73.4 \pm 3.6^\circ\text{F}$  for a minimum of 24 hours prior to test.

## 6.2.2 Preparation of Bonded Tile Assemblies.

6.2.2.1 Bonded tile assemblies for all tests specified shall be prepared as follows:

All bonded tile assemblies shall be made in an atmosphere of 50% R.H.  $\pm 5\%$  and at a temperature of  $73.4 \pm 3.6^\circ\text{F}$  free of drafts or direct sunlight. The porous surface of each tile shall be dusted to remove any loose particles.

With a T square, or carpenter square, draw a pencil line on the porous side of the tile  $\frac{1}{4}$  inch in from the tile edge. See Figure 2. (This line will serve as a guide in the overlapping of tile, as explained below.)

The template is placed over the unglazed back of a standard test tile. Sufficient adhesive is trowled across the template and screeded clean so as to neatly and completely fill the holes in the template. The template is then carefully removed vertically.

Spacer rods are then inserted in each of the four (4) corners of the tile, one inch into the specimen to provide easy removal. See Figure 2.

Exactly two (2) minutes after the adhesive has been applied, an uncoated standard test tile is brought into contact with the coated tile and offset in such a manner that each tile overlaps an end of the other tile by exactly  $\frac{1}{4}$  inch, using the previously scribed pencil line as a guide, so that a total overlap area of 17

square inches is obtained, with the edges of the tile being exactly parallel.

Having placed the bonded tile assembly on a level surface, the assembly shall then be immediately subjected to a total load of 15 lbs. (One (1) quart can filled with #3 lead shot) for a period of exactly three (3) minutes. After exactly one (1) hour remove spacer rods carefully.

Tiles bonded in this manner are considered bonded tile assemblies.

6.2.2.2 Preconditioning. After completion of the bonding, the assemblies shall be conditioned in an atmosphere of 50% R.H.  $\pm 5\%$  and at a temperature of  $73.4 \pm 3.6^\circ\text{F}$  for a period of 72 hours. After this period, excess adhesive shall be removed from the assemblies. They shall also be checked to ensure correct parallelism. Any assemblies found to be NOT PARALLEL shall NOT be used for these tests.

6.2.2.3 Conditioning of Bonded Tile Assemblies. Bonded tile assemblies are to be aged in a horizontal position for a period of 21 days in an air circulating oven, as described in 6.2.1.4, at  $120 \pm 2^\circ\text{F}$ . Tile assemblies shall be so placed in the oven to provide circulation around the entire specimen, with a minimum of one (1) inch clearance between each specimen in all directions and one (1) inch from oven walls.

Remove assemblies after 21 days and further condition for a period of 24 hours in an atmosphere of 50% R.H.  $\pm 5\%$  and at a temperature of  $73.4 \pm 3.6^\circ\text{F}$  immediately prior to testing.

## 6.2.3 Procedure.

6.2.3.1 Shear Strength at  $73.4 \pm 3.6^\circ\text{F}$ . Five bonded tile assemblies prepared, dried and conditioned in accordance with 6.2.2 shall be tested in a vertical position by compression loading at a rate of 0.50 inches per minute so that the adhesive is stressed in shear.\* Jigs, fixtures, or devices must be employed to exert the compression load directly parallel and in line with the layer of adhesive in the test

\*Tinius Olsen, Dillon or equivalent machines have been found to be satisfactory for these purposes.

assembly. Failure of the material shall occur when the bond breaks suddenly, or when the stress causing deformation of the adhesive has reached a maximum value. If a tile breaks, the stress producing this failure shall not be used in computing the shear strength of the bonding material. Shear strength shall be calculated in accordance with the method described in 6.2.4.

**6.2.3.2 Type 1 - Shear Strength Wet.** Five bonded tile assemblies prepared, dried and conditioned in accordance with the method outlines in 6.2.2 shall be immersed in distilled or deionized water at  $73.4 \pm 3.6^\circ\text{F}$  for a period of seven (7) days. Assemblies shall then be removed, wiped with a cloth and, within two (2) minutes, tested in shear in accordance with the method described in 6.2.3.1. Shear strength shall be calculated in accordance with the method described in 6.2.4.

**Type 11 - Shear Strength Wet.** Five bonded tile assemblies prepared, dried and conditioned in accordance with the method outlined in 6.2.2 shall be immersed in distilled or deionized water at  $73.4 \pm 3.6^\circ\text{F}$  for a period of four (4) hours. Assemblies shall be removed and wiped with a cloth. Allow tile assemblies to recover for a period of twenty (20) hours at  $73.4 \pm 3.6^\circ\text{F}$ -50% R.H.  $\pm 5\%$ . Repeat for a total of four (4) cycles. After fourth cycle, assemblies are to be tested in accordance with 6.2.3.1. Shear strength shall be calculated in accordance with the method described in 6.2.4.

**6.2.3.3. Shear Strength - 28 days.** Five bonded tile assemblies shall be prepared in accordance with the method outlined in 6.2.2.1. and shall be aged for a period of 28 days in an atmosphere of 50% R.H.  $\pm 5\%$  and at a temperature of  $73.4 \pm 3.6^\circ\text{F}$ . The assembly shall then be tested in shear in accordance with the method described in 6.2.3.1, and the shear strength calculated in accordance with the method described in 6.2.4.

**6.2.3.4 Accelerated Aging.** Accelerated aging will be conducted on five (5) bonded tile assemblies prepared in accordance with the method outlines in 6.2.2.1, preconditioned according to 6.2.2.2.

At the end of this period the five (5) bonded tile assemblies shall be immediately trans-

ferred to an air-circulating oven at  $140 \pm 2^\circ\text{F}$  for a period of 28 days.

At the end of the 28-day period of accelerated aging, the bonded tile assemblies shall be further conditioned for a period of 24 hours in an atmosphere of 50% R.H.  $\pm 5\%$  and at a temperature of  $73.4 \pm 3.6^\circ\text{F}$ , then tested in shear in accordance with the method outlined in 6.2.3.1.

**6.2.3.5 Heat Resistance.** Two bonded tile assemblies prepared, dried and conditioned in accordance with 6.2.2. shall be suspended vertically in an air-circulating oven at  $120 \pm 2^\circ\text{F}$ . The top tile shall be held in a mechanical clamp to ensure vertical alignment. A load of 10 lbs. shall be suspended from the bottom tile and allowed to hang freely. (This load can be applied by running a steel wire over the top edge of the bottom tile and hanging a 5 lb. weight from each end of the wire.)

The bonded tile assembly shall maintain a 10 lb. static load in shear without failure for 24 hours.

**6.2.3.6 Impact Test.** Prepare two impact test assemblies as follows:

Using a good contact bond cement, laminate the reverse or back side of a piece of gypsum wallboard (complying with ASTM designation C36)  $3/8'' \times 12'' \times 12''$  to a  $1/8'' \times 12'' \times 12''$  steel plate.

Rule the face side of the gypsum wallboard into four (4) adjacent  $4\frac{1}{4}'' \times 4\frac{1}{4}''$  square areas laid out in a square geometrically centered so that the edges of the square are parallel to the edges of the wallboard. Apply the adhesive under test to the back of four (4) individual test tiles, in accordance with 6.2.2.1. Immediately place tiles in the pattern laid out on the gypsum wallboard without the use of spacer rods, making sure tiles are butted to each other.

Place a  $3/4'' \times 12'' \times 12''$  plywood board on the four (4) tiles; then place a 15-lb. total load on the center of the plywood for a total period of three (3) minutes.

Condition the assembly for 72 hours in an atmosphere of 50% R.H.  $\pm 5\%$  and at a temperature of  $73.4 \pm 3.6^\circ\text{F}$ . At the end of this period remove excess adhesive from edges of tile,



then place in an air-circulating oven at  $120 \pm 2^\circ\text{F}$  for a total period of 72 hours. The assembly is then further conditioned for a period of 28 days at  $140 \pm 2^\circ\text{F}$ . At the end of this period remove the assembly from the oven and further condition in an atmosphere of 50% R.H.  $\pm 5\%$  and at a temperature of  $73.4 \pm 3.6^\circ\text{F}$  for a period of 24 hours.

Support the impact assembly on 2 x 4's, the inside dimensions of which are 10" x 10", so that the edges of the tiles will be  $\frac{3}{4}$ " from the 2 x 4 frame on all sides.

A 2-lb. steel ball, with a screw eye attached to the ball shall be supported by a thin cord, or string, and secured to a laboratory ring stand, or other suitable holding device. The ball shall be suspended above the center of the test panel so that the distance between the bottom of the ball and the surface of the steel plate is exactly 48 inches. The string will then be burned to enable the ball to fall free.

This impact test is performed only once to each panel.

#### 6.2.4 Calculation of Shear Strength

6.2.4.1 In calculating shear strength, the load at failure of each five (5) assemblies subjected to a test shall be recorded and the average of five (5) readings taken for calculating the shear strength in pounds per square inch of the bonded area. To calculate the shear strength in p.s.i. of bonded area, divide the average load in pounds by 8.5 square inches. The average actual bonded area produced by the template method of assembly is 8.5 square inches. Any individual reading which varies from the average by more than 15 per cent, plus or minus, shall be discarded and not used for determining the shear strength. If less than three (3) values remain for averaging, the test shall be rerun by using 10 bonded tile assemblies. The average of these 10 tile values shall be taken as the shear strength and none shall be discarded.

6.3 Stain Test. Apply adhesive to the back of four (4) glazed standard test tiles so that a continuous film of  $\frac{1}{8}$ " thickness covers the entire back of the tiles; cover the adhesive with a 5" x 5" piece of aluminum foil, folding excess of foil over the edges of each tile so that solvent penetration is directed

into the tile. Allow test specimens to be conditioned for a period of seven (7) days in an atmosphere of 50% R.H.  $\pm 5\%$  and in a temperature of  $73.4 \pm 3.6^\circ\text{F}$  in a vertical position to simulate an actual wall application.

At the end of the seven (7) day period, crack the tile through the center by striking with a blunt instrument on the face of the tile. The depth of adhesive stain penetration into the tile is made visible by exposing the broken tile edge to a "black light", such as a GE 20 watt 24 inch black light tube F20 T 12/BLB... or other lamp of equal spectral characteristics. For visual comparison, repeat the examination using an uncoated test tile. See note, page 14.

The maximum depth of stain for each tile shall be expressed as a percentage of the tile thickness. The maximum penetration for test tiles shall be reported.

6.4 Test for Mold Growth. The organism used for this test shall be *ASPERGILLUS NIGER*. The stock cultures may be kept for not more than four (4) months in a refrigerator at approximately  $37.4^\circ$  to  $50^\circ\text{F}$ . The culture medium shall be potato dextrose agar from Difco Products, Inc., Detroit, Michigan — or its equivalent.

Dissolve 39 grams of the agar in one (1) liter of water, using heat. Autoclave the medium and two 1" square pieces of tile at 15 lbs. per square inch for 15 minutes. Cover the unglazed side of one piece of sterile tile with a  $\frac{1}{8}$ " layer of adhesive. Place the coated tile with the adhesive side up in a sterile petri dish and pour sterile agar into the dish until the surface of the agar is level with the edge of the adhesive. Inoculate with the organism.

For control purposes, one petri dish containing only the agar medium and the other piece of tile shall be inoculated with the test organism to determine the viability of the inoculum.

Place the petri dishes in an incubator at  $82.4$  to  $86^\circ\text{F}$  and at a relative humidity of 85 to 95 per cent. After 14 days of incubation, examine to ascertain whether the adhesive supports mold growth. (At the end of the inoculation period the control shall be well covered with a mold growth.)

## 7. Manufacturer's Instructions

**7.1 Application.** The container shall be clearly labeled. The necessary directions for application and the general instructions shown below shall appear on the container.

**Type of Adhesive** – Directly below the brand name or number, the proper type designation shall appear in a minimum of 14 pt. type as follows:

**Type I** – For Installation of Ceramic Tile in Interior Areas Requiring Prolonged Water Resistance.

**Type II** – For Installation of Ceramic Tile in Interior Areas Requiring Intermittent Water Resistance.

Instructions for storage – including any provisions for freezable type materials.

Instructions for practical handling on the job in reference to surface skinning time.

Types of tools to be used.

Solvent and methods of cleaning the tools and work.

Warnings of improper applications, conditions, and locations which may cause failure of the adhesive.

If solvents are suggested for thinning or cleaning tools or work, the necessary precautions shall be stated on the label to eliminate any hazard from their use.

**7.2 Storage.** The manufacturer shall certify that the adhesive will meet the requirements of this specification within a period of not less than one year of storage in accordance with the manufacturer's instructions.

## 8. Toxicity and Flammability

**8.1 Labels.** The labels on the containers shall state plainly, wherever required by law, any tendencies of the material to be toxic or irritating to the workman under normal application conditions, and any tendencies toward flammability; and shall set forth precautions to be observed for protection of the workman.

**NOTE: WARNING** – the use of "black light" as directed in Section 6.3 (Stain Test) may be conditioned by the presence of fluorescent materials and hence only visual examination will be possible.

# ORGANIC ADHESIVES FOR INSTALLATION OF CERAMIC TILE

## SCHEDULE "A"

### QUALITY CONTROL STANDARD

The following quality control tests are the minimum tests required to be run on each production batch of adhesive before shipment:

#### I. CONSISTENCY

Consistency or viscosity must be controlled by suitable mechanical viscosity measuring instrument.

#### II. WEIGHT PER GALLON

This determination shall be made in accordance with ASTM D-816. Difference in the weight per gallon from batch to batch shall not vary more than 3% from stated average weight per gallon.

#### III. TOTAL SOLIDS

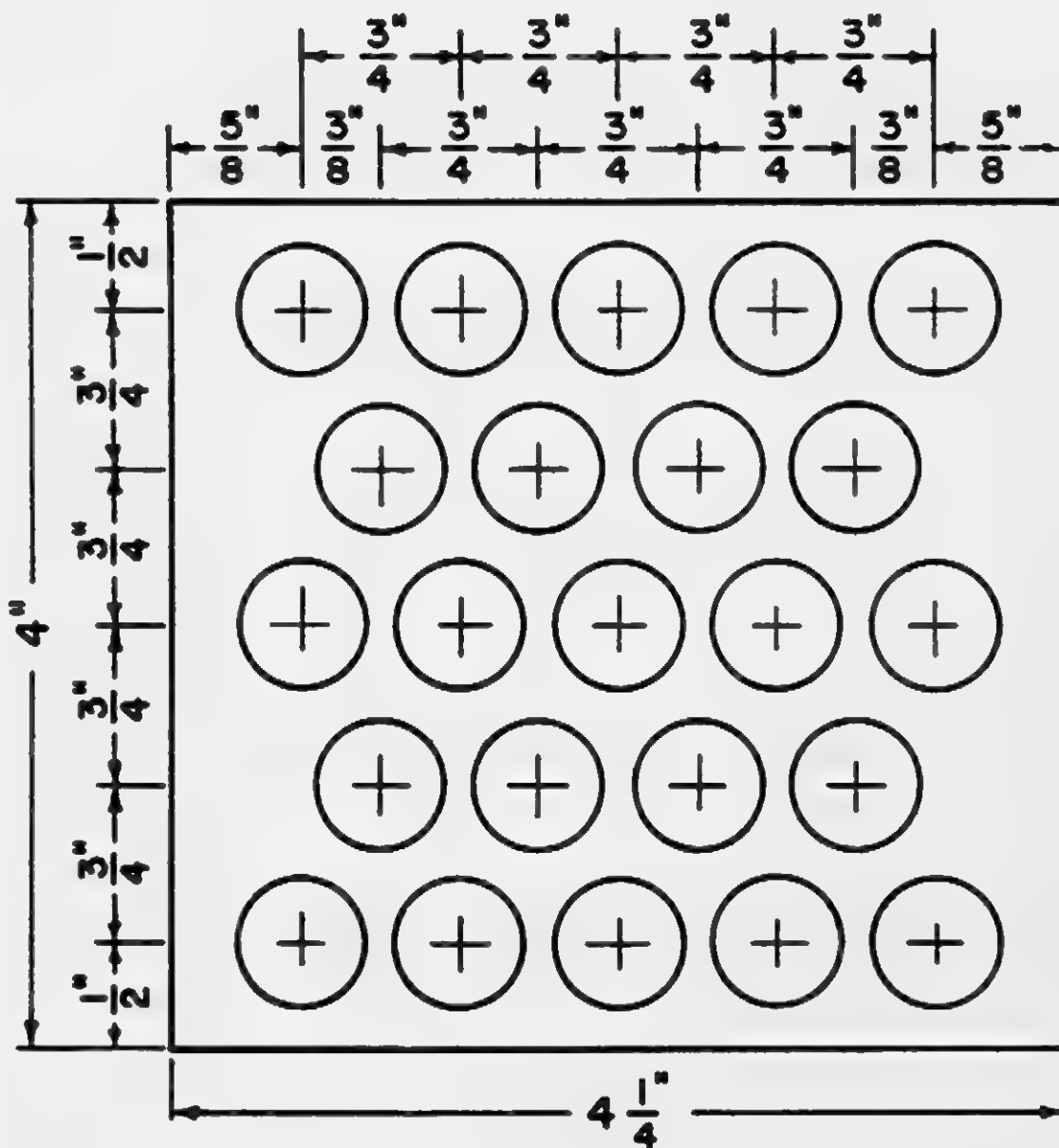
Total solids determinations shall be made in accordance with ASTM D-553-42. Difference in total solids from batch to batch shall not vary more than plus or minus 3% from stated total solids.

#### IV. ADHESION

Apply adhesive to face of gypsum wallboard using trowel. Apply two (2) commercial grade 4¼" x 4¼" ceramic tiles to the adhesive bed within the open time recommended by the manufacturer, using sufficient pressure to ensure a good bond. Condition bonded assembly for one hour at room temperature followed by 24 hours at 120°F. Remove bonded assembly from oven and allow to cool to room temperature for one hour. Remove tiles from gypsum wallboard using a suitable instrument. Paper failure must occur over 50% of the bonded area.

# FIG. 1 CERAMIC TILE TEST ASSEMBLY TEMPLATE

FULL SCALE



MATERIAL - TEFLON,  $0.0625'' \pm .002''$  THICK  
 HOLE DIAMETER =  $0.5625'' \pm .005''$   
 ACTUAL COVERAGE =  $50\% \pm 5\%$



FIG. 2  
CERAMIC TILE TEST ASSEMBLY  
LOWER PORTION

FULL SCALE

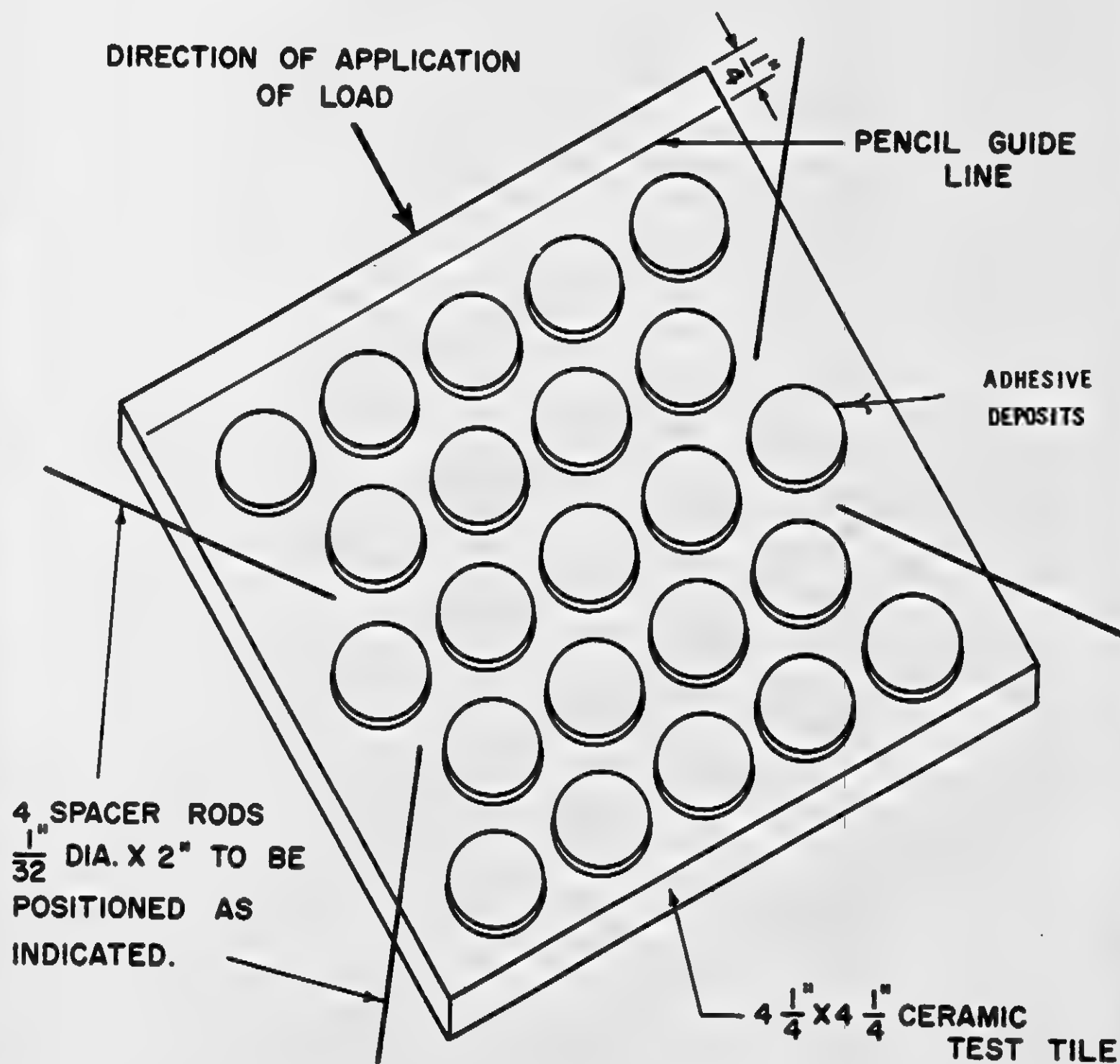
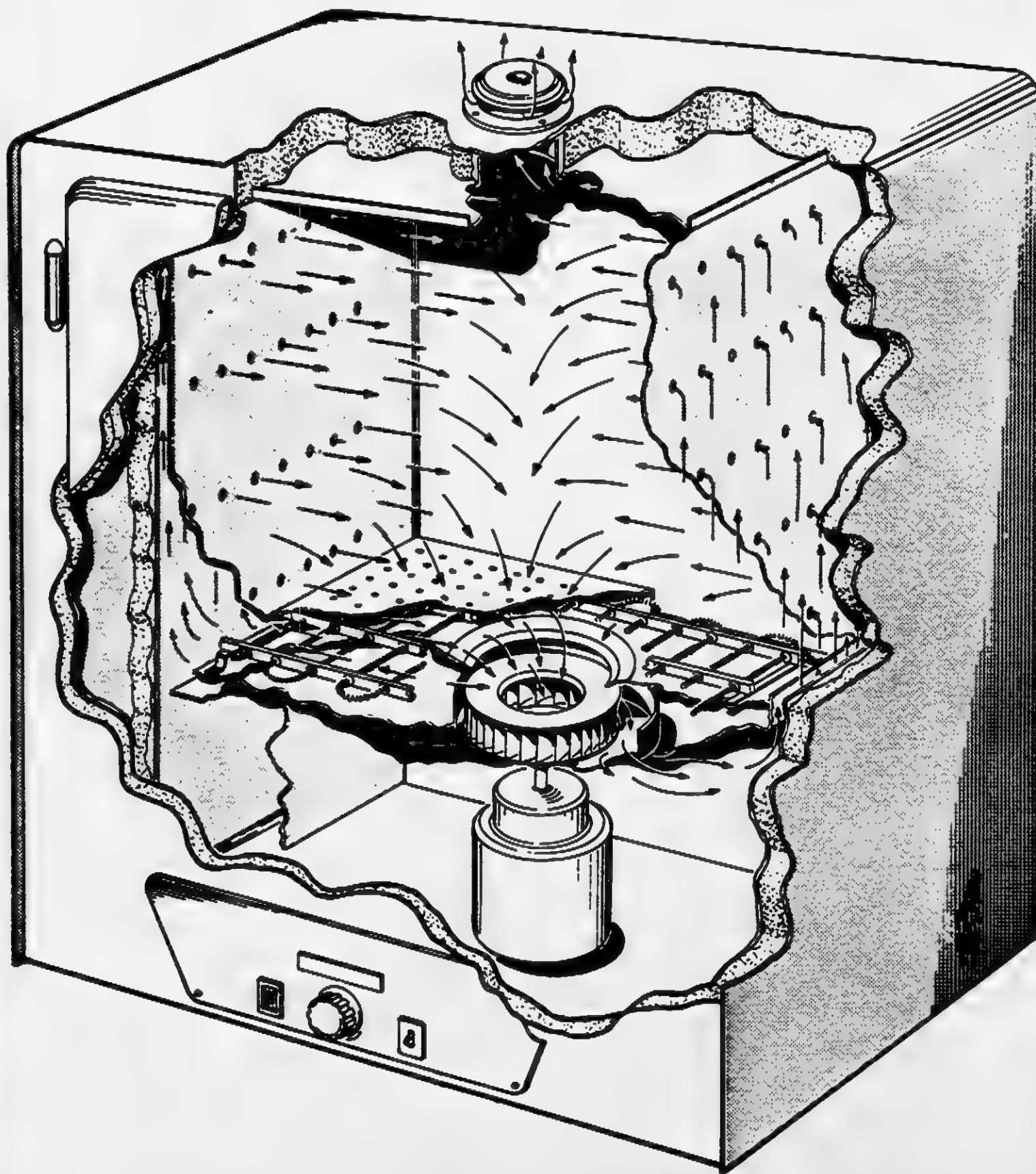


FIG. 3  
OVEN



**APPENDIX B**

(This Appendix is not a part of the standards, but is included to facilitate their use)

**SUGGESTED GUIDE OUTLINE FORM**

This form is intended as a suggested guide to be used by the architect and specifier in preparing the working rough draft when USAS A108.4-1968, is made a part of the project specification by reference. Refer to Paragraph E-1b of FOREWORD E-EXPLANATION AND NOTES.

The items included in the outline form beginning with Paragraph 4 and ending with Paragraph 12 are intended to supplement and modify the standards. In most cases these supplements and modifications are necessary to adapt the standard to an individual project and to clarify contract requirements.

The specifier should add or omit supplements and modifications to the standards as necessary to fit the individual job conditions and local requirements. Refer to NOTES TO SPECIFICATION WRITER, following, for check list of items to be considered.

This outline form must be marked up, filled in, crossed out and otherwise revised to fit each specific project; from this draft the stencils or plates for final duplication can be typed. The words, figures or clauses in parenthesis indicate a choice that must be made. Inapplicable words, figures and clauses must be omitted, or revised to suit local job conditions. The blank spaces provided at various locations should be filled in to complete the information necessary.

Additional copies of this Suggested Guide Outline Form for use in preparing project specifications are available from the Tile Council of America, Inc., 800 Second Avenue, New York, N.Y. 10017, Telephone (212) 697-9269.

**NOTES TO SPECIFICATION WRITER**

The following reminder notes are intended as a partial check list for the specification writer using this Suggested Guide Outline Form in connection with USAS A108.4-1968.

- NOTE 1:** The recommendations included in Paragraphs E-2, E-4 and E-5 of FOREWORD E-EXPLANATION AND NOTES for backing materials, expansion and control joints, and material and accessories should be checked for each project and followed where applicable.
- NOTE 2:** The items listed under Paragraph E-3 "Requirements of Related Trades" in FOREWORD E-EXPLANATION AND NOTES should be checked for each project and incorporated in the proper section of the project specification as applicable.
- NOTE 3:** It may be necessary to include a list of locations for areas that are to receive spot patching or underlayment unless such treatments are included under other trades. Refer to Paragraph 5b1 of USAS A108.4-1968.
- NOTE 4:** If a particular type of factory mounting is required for ceramic mosaic or wall tile it should be specified. Refer to Paragraph 7(B) of Suggested Guide Outline Form.
- NOTE 5:** If the project drawings and details do not indicate the type of wall tile trim shapes required, they may be listed herein by shape numbers. Refer to Paragraph 9(E) of this Suggested Guide Outline Form.
- NOTE 6:** If the location and setting heights of tile accessories are not indicated or noted on the project drawings, they should be specified herein. Refer to Paragraph 10 of this Suggested Guide Outline Form.
- NOTE 7:** Where special chemical resistant mortars and grouts such as epoxy and furan resin are required, they should be added to the project specification. Refer to Paragraph 11 of Suggested Guide Outline Form and Tile Council of America, Inc. Handbook for Ceramic Tile Installation, latest edition.
- NOTE 8:** For large projects where a supply of extra tile of same colors and patterns are desired by the owner for future maintenance or minor alterations, a paragraph stating the quantities required should be added to the project specification.

Project No. \_\_\_\_\_

SECTION \_\_\_\_\_

### CERAMIC TILE

(Installed with Water-Resistant Organic Adhesives)

#### 1. SCOPE OF WORK:

(A) WORK INCLUDED: This section includes all ceramic tile and related items necessary to complete the project as indicated on the drawings and specified, unless specifically excepted.

- (1) Unless otherwise indicated or specified all ceramic tile described herein shall be set with water-resistant organic adhesives.

(B) RELATED WORK INCLUDED IN OTHER SECTIONS: The following items of related work are included in other sections of the project specification.

- (1) Metal or wood furring on masonry walls back of ceramic tile.
- (2) Portland cement and gypsum plaster to receive ceramic tile.
- (3) Gypsum wallboard, asbestos-cement board and plywood backing to receive ceramic tile.
- (4) Underlayment board over wood floor construction to receive floor tile.
- (5) Finishing and curing of concrete slabs to receive tile floors.
- (6) Furnishing and setting of floor drains in tile floors.
- (7) Membrane waterproofing and metal shower pans under ceramic tile floors.
- (8) Metal bathroom accessories.
- (9) Conductive type tile floors.
- (10) Prefabricated ceramic tile panels.
- (11) Protection of tilework after setting and cleaning.
- ( ) \_\_\_\_\_
- ( ) \_\_\_\_\_
- ( ) \_\_\_\_\_

(Note: Add or omit items as applicable to project.)

(C) NON-TECHNICAL REQUIREMENTS: Refer to Bidding Requirements, General Conditions, Supplementary General Conditions and \_\_\_\_\_; these sections are applicable to this section and shall form a part of the contract.

#### 2. REFERENCED SPECIFICATIONS AND STANDARDS:

(A) USA Standards, Federal Specifications, ASTM Specifications and other published specifications and standards hereinafter referred to by number or title shall form a part of this specification to the extent required by the references thereto. The referenced specification or standard shall include all amendments in effect on the date of invitation for bids. In case of conflict between the referenced specification or standard and the project specification, the project specification shall govern. The contractor, when directed, shall furnish an affidavit from the manufacturer, certifying that the materials or products delivered to the project comply with the requirements specified.

#### 3. COMPLIANCE WITH USA STANDARDS:

(A) Unless otherwise indicated on the project drawings or supplemented or modified herein, all materials and the installation and workmanship for Ceramic Tile shall comply with the applicable requirements of USA Standard Specifications for Ceramic Tile Installed with Water-Resistant Organic Adhesives A108.4-1968.

#### 4. ACCEPTABLE MANUFACTURERS:

(A) Except as otherwise specified herein, or specifically approved by the architect, all ceramic and quarry tile shall be products of any of the following manufacturers, subject, however, to compliance with specification requirements.

- (1) \_\_\_\_\_  
 ( ) \_\_\_\_\_  
 ( ) \_\_\_\_\_  
 ( ) \_\_\_\_\_  
 ( ) \_\_\_\_\_

(B) The materials or products specified herein and indicated on drawings by trade name, manufacturer's name or catalogue number shall be provided as specified. Tile of equal quality in compliance with specification requirements will be permitted only when approved by the architect.

#### 5. SHOP DRAWINGS:

(A) Submit shop drawings for special tile pattern work in \_\_\_\_\_ to architect for approval. Obtain approval of drawings prior to proceeding with manufacturing.

#### 6. SAMPLES:

(A) Submit samples (in duplicate) of the following materials to architect for approval. Approval must be obtained prior to delivery.

- (1) Wall tile panels for each color and type of tile proposed; at least 4 tiles per panel.
- (2) Floor tile panels for each color and type of tile proposed, at least 8 square inches in area.
- (3) Each type trim shape and each tile accessory specified.
- ( ) \_\_\_\_\_
- ( ) \_\_\_\_\_

(B) Submit satisfactory proof from the manufacturer that the adhesives to be used are proper for the intended application.

#### 7. GENERAL REQUIREMENTS FOR TILE:

(A) QUALITY, GRADE AND CERTIFICATE: Tile shall be Standard Grade and comply with requirements of USAS A137.1-1967 with modifications as specified herein. Tile shall be of grade specified and all containers grade-sealed in accordance with minimum grade specifications described in USAS A137.1-1967.

- (1) In addition to grade seal, furnish architect with Master Grade Certificate stating grade, kind of tile, identification marks for tile packages and the name and location of job; certificate shall be signed by the manufacturer and issued when shipment of tile is made. Deliver containers to site with seals unbroken.

(B) FACTORY MOUNTING OF TILE: Factory mounting into sheets of patterns selected shall be required for all ceramic mosaic tile and other tile hereinafter designated as "mounted." Unless the type of mounting is specified, it shall be optional with the contractor, provided that the mounting used is suitable for adhesive applications.

(C) COLORS AND PATTERNS: (Colors and patterns of tile shall be as selected by architect; after award of contract, the architect will furnish contractor with schedule showing location of tile colors and patterns selected) or (Colors and patterns of tile shall be as indicated by schedules on drawings or in specifications; however, the architect may select the exact shades or textures of tile within the limits of the selected manufacturer's standard type and group as specified and scheduled).

#### 8. TYPES OF FLOOR TILE - MATERIALS AND LOCATIONS:

(A) UNGLAZED PORCELAIN TYPE CERAMIC MOSAIC TILE: Tile shall be Standard Grade, unglazed dust-pressed porcelain type, similar to " \_\_\_\_\_ " as manufactured by \_\_\_\_\_; not less than  $\frac{1}{4}$  inch thick with (cushion edges)-(square edges) and in nominal face sizes (of \_\_\_\_\_ inches)-(as indicated or scheduled). Tile shall comply with Section 6a of USAS A137.1-1967 or with Type I, Class A, Form 1 Classification as defined in Federal Specification SS-T-308b. Provide all necessary shapes and trimmers of similar tile for curbs, depressions, corners and \_\_\_\_\_. Use this tile for floors in \_\_\_\_\_.

(B) UNGLAZED NATURAL CLAY TYPE CERAMIC MOSAIC TILE: Tile shall be Standard Grade, unglazed (dust-pressed)-(extruded) natural clay type, similar to " \_\_\_\_\_ " as manufactured by \_\_\_\_\_;



not less than  $\frac{1}{4}$  inch thick with (cushion edges)-(square edges) and in nominal face sizes (of \_\_\_\_\_ inches)-(as indicated or scheduled). Tile shall comply with Section 6a of USAS A137.1-1967 or with Type I, Class B, Form 1 Classification as defined in Federal Specification SS-T-308b. Provide all necessary shapes and trimmers of similar tile for curbs, depressions, corners and \_\_\_\_\_. Use this tile for floors in \_\_\_\_\_.

(C) **UNGLAZED PAVER TILE:** Tile shall be Standard Grade, unglazed dust-pressed natural clay type pavers, similar to "\_\_\_\_\_" as manufactured by \_\_\_\_\_; not less than ( $\frac{1}{4}$  inch)-( $\frac{1}{4}$  inch) thick with square edges and in nominal face sizes of \_\_\_\_\_ inches. Tile shall comply with Section 8 of USAS A137.1-1967 or with Type I, Class B, Form 2 Classification as defined in Federal Specification SS-T-308b. Provide all necessary shapes and trimmers of similar tile for curbs, depressions, corners and \_\_\_\_\_. Use this tile for floors in \_\_\_\_\_.

(D) **QUARRY TILE:** Tile shall be Standard Grade, extruded square-edge quarry tile similar to "\_\_\_\_\_" as manufactured by \_\_\_\_\_; not less than ( $\frac{1}{4}$  inch)-( $\frac{1}{4}$  inch) thick, with ribbed or other bonding features on back and in face sizes of \_\_\_\_\_ inches. Tile shall comply with Section 7 of USAS A137.1-1967 or with Type I, Class C Classification as defined in Federal Specification SS-T-308b. Provide the necessary special shapes of similar tile for curbs, depressions, corners and \_\_\_\_\_. Use this tile for floors in \_\_\_\_\_.

- (1) Quarry tile for floors, of \_\_\_\_\_ shall be non-slip type similar to "\_\_\_\_\_" as manufactured by \_\_\_\_\_. Tile shall have abrasive aggregate embedded in the exposed wearing surface in accordance with manufacturer's standard practice and otherwise comply with Section 7, USAS A137.1-1967. Tile shall be \_\_\_\_\_ inch thick and in face sizes of \_\_\_\_\_ by \_\_\_\_\_ inches.

(E) **NON-SLIP TILE-DRY PROCESS METHOD:** The type, grade and patterns for non-slip tile shall be similar to the tile specified for the room or space in which the non-slip feature is required, except tile must also comply with Section 6a.2.9 USAS A137.1-1967. Provide the necessary special shapes of non-slip tile for curbs, depressions, nosings, corners and \_\_\_\_\_. Use non-slip tile for floors and curbs in showers, dressing compartments adjacent to showers and for \_\_\_\_\_.

#### 9. TYPES OF WALL TILE - MATERIALS AND LOCATIONS:

(A) **GLAZED WALL TILE-LARGE UNITS:** Tile shall be Standard Grade glazed tile similar to "\_\_\_\_\_" as manufactured by \_\_\_\_\_; not less than  $\frac{5}{16}$  inch thick with (cushion edges)-(square edges) a colored (matt)-(bright)-(crystalline) glazed finish and in nominal face sizes (of \_\_\_\_\_ inches)-(as indicated or scheduled). Provide spacer lugs or other similar features on edges of tile. Tile shall comply with Section 5, USAS A137.1-1967 or with Type II, Class G Classification as defined in Federal Specification SS-T-308b. Use this tile for (walls)-(wainscots)-(ceilings) and \_\_\_\_\_.

(B) **GLAZED CERAMIC MOSAIC TILE - SMALL UNITS:** Tile shall be Standard Grade, glazed ceramic mosaic tile similar to "\_\_\_\_\_" as manufactured by \_\_\_\_\_; not less than  $\frac{1}{4}$  inch thick with (cushion edges)-(square edges) a colored (matt)-(bright)-(crystalline) glazed finish and in nominal face sizes (of \_\_\_\_\_ inches)-(as indicated or scheduled). Tile shall comply with Section 6b of USAS A137.1-1967 or Type II, Class J Classification as defined in Federal Specification SS-T-308b. Use this tile for walls and \_\_\_\_\_ in \_\_\_\_\_.

(C) **UNGLAZED NATURAL CLAY TYPE TILE - SMALL UNITS:** Tile shall be Standard Grade, unglazed (dust-pressed)-(extruded) natural clay type, similar to "\_\_\_\_\_" as manufactured by \_\_\_\_\_; not less than  $\frac{1}{4}$  inch thick with (cushion edges)-(square edges) and in nominal face sizes (of \_\_\_\_\_ inches)-(as indicated or scheduled). Tile shall comply with Section 6a of USAS A137.1-1967 or with Type I, Class B, Form 1 Classification as defined in Federal Specification SS-T-308b. Use this tile for (walls)-(wainscots)-(ceilings) and in \_\_\_\_\_.

(D) **UNGLAZED PORCELAIN TYPE TILE - SMALL UNITS:** Tile shall be Standard Grade unglazed dust pressed porcelain type, similar to "\_\_\_\_\_" as manufactured by \_\_\_\_\_; not less than  $\frac{1}{4}$  inch thick, with cushion edges and in nominal face sizes (of \_\_\_\_\_ inches)-(as indicated or scheduled). Tile shall comply with Section 6a of USAS A137.1-1967 or with Type

I, Class A, Form 1 Classification as defined in Federal Specification SS-T-308b. Use this tile for (walls)-(wainscots)-(ceilings) and \_\_\_\_\_ in \_\_\_\_\_.

(E) WALL TILE TRIM SHAPES AND BASES: Trim units and shapes shall be of same type as wall tile and shall comply with Section 4.2 of USAS A137.1-1967 or with Type III Classification as defined in Federal Specification SS-T-308b. Include all bases, caps, stops, returns, trimmers, and other shapes indicated or required to produce a completely finished installation. Trim shapes shall be of sizes and shapes indicated and of color and finish to match the wall tile, unless otherwise indicated.

#### 10. TILE ACCESSORIES:

(A) GENERAL: Accessories shall be porcelain type tile and of color to match adjoining wall tile unless otherwise designated. The location of tile accessories shall be as indicated on drawings.

- (1) Paper Holders: (Recessed)-(Semi-recessed)-(Surface-mounted) type, similar to No. \_\_\_\_\_ as manufactured by \_\_\_\_\_, size \_\_\_\_\_ by \_\_\_\_\_ inches and complete with hardwood or plastic roller.
- (2) Soap Holders: (Recessed)-(Semi-recessed)-(Surface-mounted) type similar to No. \_\_\_\_\_ as manufactured by \_\_\_\_\_, size \_\_\_\_\_ by \_\_\_\_\_ inches.
- (3) Soap Holders with Grab Bar: (Recessed)-(Semi-recessed)-(Surface-mounted) type, with integral projecting grab bar and extended lip drain; similar to No. \_\_\_\_\_ as manufactured by \_\_\_\_\_ size \_\_\_\_\_ by \_\_\_\_\_ inches.
- (4) Tumblers and Toothbrush Holder: Surface-mounted type similar to No. \_\_\_\_\_ as manufactured by \_\_\_\_\_ size \_\_\_\_\_ by \_\_\_\_\_ inches.

(B) INSTALLATION: Install accessories in accordance with the printed directions of the manufacturer as applicable to job conditions. Cut wall tile and arrange joint pattern around accessories as indicated on the drawings.

#### 11. GROUT TYPE AND COLOR:

(A) The type and color of grout shall be as follows for various types of tile.

- (1) Unglazed ceramic mosaic floor tile: Type: \_\_\_\_\_ Color: \_\_\_\_\_
- (2) Unglazed paver floor tile: Type: \_\_\_\_\_ Color: \_\_\_\_\_
- (3) Quarry tile: Type: \_\_\_\_\_ Color: \_\_\_\_\_
- (4) Glazed wall tile: Type: \_\_\_\_\_ Color: \_\_\_\_\_
- (5) Unglazed wall tile: Type: \_\_\_\_\_ Color: \_\_\_\_\_

#### 12. INSTALLATION OF TILE:

(A) Except as otherwise indicated on drawings or specified herein, the installation of all ceramic tile to be set with water-resistant organic adhesives shall conform to the applicable requirements of USAS A108.4-1968.

*(End of Suggested Guide Outline Form)*

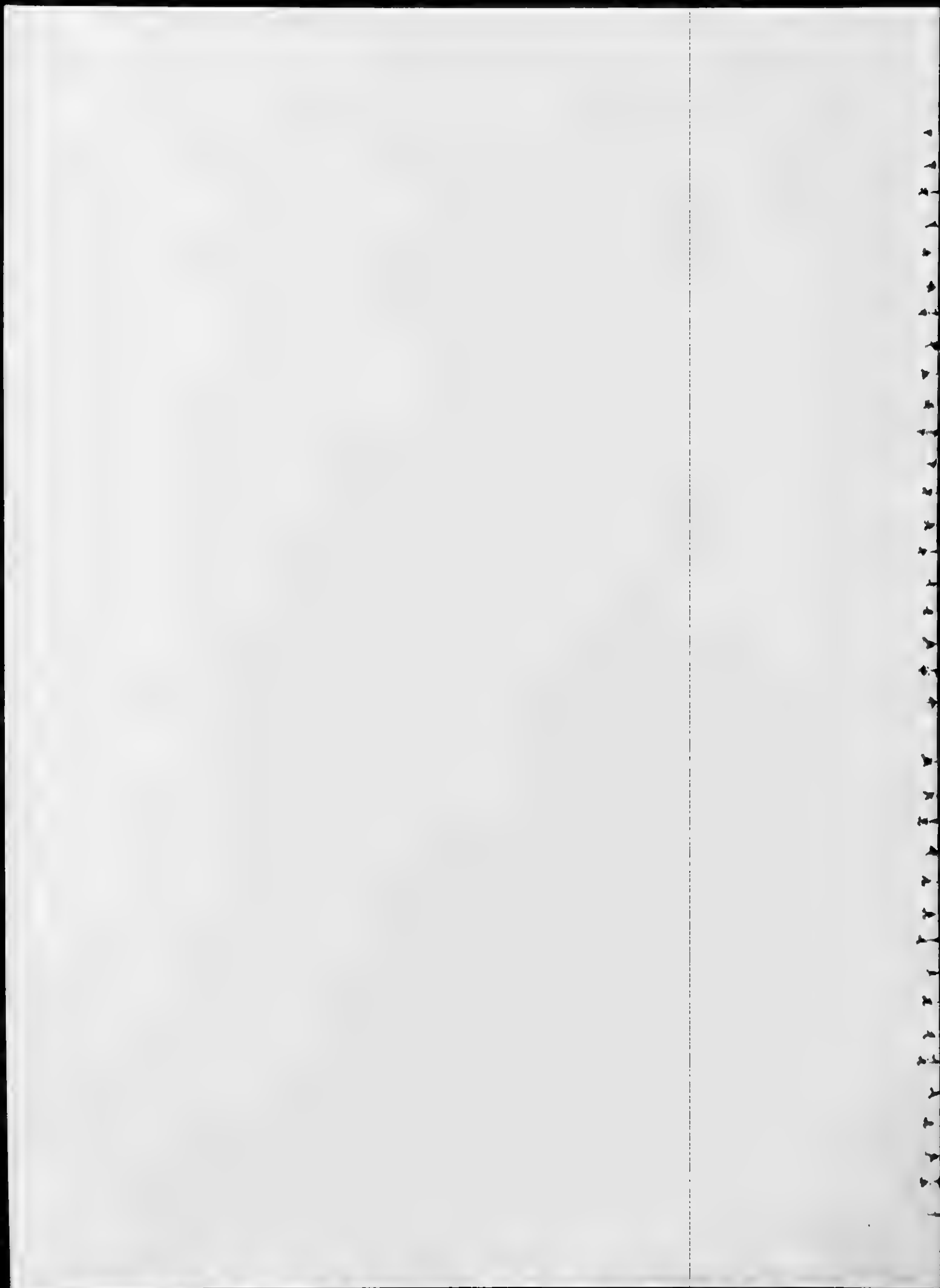
## Personnel of USA Standards Committee A108

**Sponsor:** Tile Council of America, Inc.

**Chairman:** Thomas H. Boone  
National Bureau of Standards  
Washington, D.C. 20234

Adhesive and Sealant Council . . . . . *Stansel, Robert M.*  
American Hotel & Motel Association . . . . . *Fassett, J. S.*  
American Institute of Architects . . . . . *Dyer, Ben H.*  
American Plywood Association . . . . . *Brown, Daniel H.*  
American Society for Testing and Materials . . . . *Illing, Arno M.*  
Bricklayers, Masons & Plasterers International  
    Union of America . . . . . *Shepherd, Robert E.*  
Federal Housing Administration . . . . . *Brown, John J.*  
Gypsum Association . . . . . *Omson, Henry*  
    (alternate) *Selbe, R. L.*  
Metal Lath Association . . . . . *Parker, Richard N.*  
    (alternate) *Ransbury, David H.*  
Mortar Manufacturers Standards Association . . . *Love, W. A.*  
    (alternates) *Krashin, B. R.*  
    *Moore, Robert A.*  
National Association of Home Builders . . *Smithman, Milton W.*  
National Bureau of Standards . . . . . *Boone, Thomas H.*  
National Concrete Masonry Association . . . *Callahan, Kevin*  
National Lime Association . . . . . *Boynton, Robert S.*  
Southern Tile, Terrazzo & Marble  
    Contractors Association . . . . . *Trimm, J. W.*  
    (alternates) *Browder, Lawrence*  
    *DeCoil, Joseph*  
    *Lee, Russell S.*  
    *McHarg, Bill B.*  
    *Murray, Jr., J. Brannon*  
Tile Contractors Association of America, Inc. . *Bertolini, Henry*  
Tile Council of America, Inc. . . . . *Fitzgerald, J. V.*  
    (alternate) *Bernett, F. E.*  
Western States Ceramic Tile  
    Contractors Assn. . . . . *Lavenberg, G. N.*  
    (alternate) *Setzer, Paul L.*  
Wire Reinforcement Institute . . . . . *Brown, Frank B.*  
    (alternate) *Weisz, C. P.*





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United States Court of Appeals  
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*Nathan J. Paulson*  
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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,073

PLASTERERS' LOCAL UNION NO. 79, OPERATIVE PLASTERERS'  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO  
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,  
Respondent,

and

TEXAS STATE TILE & TERRAZZO COMPANY, INC., ET AL,  
LOCAL UNION 20, BRICKLAYERS, ETC.  
LOCAL UNION 108, INTERNATIONAL ASSOCIATION OF  
MARBLE, ETC., POLISHERS, ET AL.  
Intervenors

---

ON PETITION TO REVIEW AND ON  
CROSS-PETITION TO ENFORCE AN  
ORDER OF THE NATIONAL LABOR RELATIONS BOARD

---

BRIEF FOR THE LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA, AFL-CIO AS AMICUS CURIAE

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,073

PLASTERERS' LOCAL UNION NO. 79, OPERATIVE PLASTERERS'  
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO  
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,  
Respondent,

and

TEXAS STATE TILE & TERRAZZO COMPANY, INC., ET AL.,  
LOCAL UNION 20, BRICKLAYERS, ETC.  
LOCAL UNION 108, INTERNATIONAL ASSOCIATION OF  
MARBLE, ETC., POLISHERS, ET AL.,  
Intervenors

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ON PETITION TO REVIEW AND ON  
CROSS-PETITION TO ENFORCE AN  
ORDER OF THE NATIONAL LABOR RELATIONS BOARD

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BRIEF AMICUS FOR THE LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA IN SUPPORT OF THE PETITION OF THE NATIONAL  
LABOR RELATIONS BOARD FOR REHEARING  
WITH SUGGESTION OF EN BANC CONSIDERATION

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On June 30, 1970, this court (Judges Leventhal and McGowan,  
with Judge MacKinnon dissenting) denied enforcement of an order  
of the National Labor Relations Board directed against Plasterers'  
Local Union No. 79 for conduct arising out of a jurisdictional  
dispute which the Board determined to be violative of Section

8(b)(4)(D) of the Act. In denying enforcement of the NLRB's order, the majority of the court reversed a twenty-year line of uniform and consistent interpretation of the provisions of Section 10(k) of the Act by ruling that the employer, against whose assignment of work the union directs its picketing, is not a "party" to the dispute and that the NLRB is precluded from hearing and determining the matter when the two disputing unions have agreed among themselves on how the employer's original assignment should have been made.

There are numerous deficiencies in the majority opinion which, as aptly noted by Judge MacKinnon in dissent, arise from the majority's "overemphasis on the 'jurisdictional dispute' here involved and its underemphasis on the fact that the dispute had ripened into a jurisdictional strike against an employer ... ." (Sl. Op., p. 35). From this faulty premise, the majority then compounded the error by (1) both misreading and placing undue reliance upon isolated portions of the legislative history and court decisions; (2) ruling that only "truly neutral" employers are entitled to a determination under Section 10(k); and (3) concluding that since the "permanent" resolution of the dispute is paramount in the statutory scheme, the two unions, inter se, are the only "parties" which are able to provide such permanent resolution. As we shall demonstrate, the premises and conclusions of the majority opinion are plainly in error and should be corrected upon rehearing.

#### I. LEGISLATIVE HISTORY AND CBS

Judge MacKinnon was eminently correct when he stated that "the legislative history of Section 10(k) does not afford any

substantial assistance to its interpretation ... ." (Sl. Op., p. 35). The fact of the matter is that nowhere in the legislative history does it appear that any member of Congress directed his attention to the question whether the word "parties," as it appears in Section 10(k), is to be limited solely to the unions or is to include the employer responsible for the work assignment.

However, some light on the question of statutory construction may be shed by recalling that Section 10(k) and Section 8(b)(4)(D) were part of a comprehensive package of amendments which were specifically designed to place restraints on union strikes and picketing.<sup>1/</sup> It will be further recalled that a considerable portion of the Congressional debate was devoted to dealing with the secondary boycott provisions of Section 8(b)(4) and that it was in this context that non-partisan support was garnered on behalf of the so called "neutral."<sup>2/</sup> Hence, placed in its proper

1/ As stated by the Supreme Court in Local 1976, Carpenters' Union v. N.L.R.B., 357 U.S. 93, 98-99 (1958):

Congress' purpose was ... aimed to restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious, widespread, and as Congress evidently judged, dangerous practice of unions to widen that conflict: the coercion of neutral employers, themselves not concerned with a primary labor dispute, through the inducement of their employees to engage in strikes or concerted refusals to handle goods.

2/ The enactment of Section 8(b)(4) reflected "the dual Congressional objective of preserving the right of labor organizations to bring pressure to bear upon offending employers in primary labor disputes and of shielding unoffending employers and others from pressures and controversies not their own." N.L.R.B. v. Denver Building and Construction Trades Council, 341 U.S. 675, 692 (1950).

context, the references in the majority opinion of concern for the "neutral" employer, more properly should be construed as focusing upon the protections afforded through Section 8(b)(4), of which the jurisdictional disputes subsection (D) was an integral part.

Evidence, however, that the Congress was more concerned with the jurisdictional strike than with other considerations is supplied by the total inter-relationship which Section 10(k) and 10(1) provide in dealing with violations of Section 8(b)(4)(D). As the statutory language of Section 8(b)(4)(D) makes clear, the unfair labor practice arises from union conduct which forces or requires "any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class ... <sup>3/</sup>" The language itself, therefore, requires that the alleged unlawful conduct of the labor organization be in protest of the employer's assignment and, as Section 10(k) prescribes, it is only when union conduct in protest of such employer assignment is made, that the NLRB is mandatorily "directed" to proceed with the matter under Section 10(k). In the interim, however, injunctive relief against union picketing is provided by Section 10(1), thus ensuring that the employer's assignment prevails pending resolution of the dispute.

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<sup>3/</sup> 29 U.S.C. § 158(b)(4)(D); Leg. Hist. of the LMRA, 1947, Vol. 1, p. 169.

To say, as the majority opinion does, that the "special provisions [of Section 10(k)] were passed, however, to protect the employer who was 'neutral' in the dispute" (Sl. Op., p. 25), is to engraft upon the present language of Section 10(k) a requirement that the NLRB, preliminarily in each case, make a determination that the employer is "truly neutral" and devoid of any interest in which craft, class or group of employees actually carries out his assignment. The fact is, however, that in virtually every case the employer is rarely "neutral" and is always concerned with the economic consequences of his assignment.<sup>4/</sup>

Nothing in the Supreme Court's CBS<sup>5/</sup> decision supports this court's conclusion that Section 10(k) procedures are to be restricted solely to cases involving "neutral" employers. In the factual context of CBS, the employer had an on-going collective bargaining relationship with two unions which represented the employer's then-working employees and regardless which group of employees the employer preferred, he found "it impossible to secure the benefits of stability from either of these contracts, not because he refuses to satisfy the unions, but because the situation is such that he cannot satisfy them."<sup>6/</sup> The CBS situation, however,

<sup>4/</sup> As the Supreme Court noted in Local 1976, Carpenters Union v. N.L.R.B., supra, note 1, in enacting Section 8(b)(4) Congress sought to proscribe union picketing aimed at "the coercion of neutral employers, themselves not concerned with the primary dispute." Since the employer's assignment is directly tied in with the wages, hours and other terms and conditions of employment which govern his employees' performance of the work, any picketing to protest such assignment is "primary" activity and must, of needs, directly concern that employer.

<sup>5/</sup> N.L.R.B. v. Radio and Television Broadcasting Engineers Union [CBS], 364 U.S. 573 (1961).

<sup>6/</sup> Id., 364 U.S., at 582. (Emphasis added). The plurality of dissatisfaction found in CBS is critical to the notion of employer neutrality.



is to be distinguished from the usual situation, exemplified by the instant case, where the employer does indicate a preference for the group of employees who are assigned to perform certain work, and where an "outside" union contests such assignment. The Supreme Court, in the CBS case itself, noted "that employer's normally select and assign their own individual employees according to their best judgment" (364 U.S., at 582). And elsewhere in the decision, the Supreme Court observed that the NLRB, in declining to render affirmative awards under Section 10(k), had "refused to consider other criteria, such as the employer's prior practices and the custom of the industry ... " (364 U.S., at 577). Thus, Supreme Court recognition of employer preferences in selecting "their own" employees in making job assignments, and admonishment of the Board for not considering "the employer's prior practices," certainly cannot square with the majority's broad characterization of employers as "helpless victims of quarrels that do not concern them at all" (Sl. Op., p. 16), and provides no justification whatsoever for withdrawing 10(k) authority from the NLRB when it has faithfully followed Supreme Court mandates.

## II. THE "PERMANENT" RESOLUTION ARGUMENT

The majority opinion states that:

... the availability of a binding agreement between the disputing unions creates means of enforcing a permanent resolution of the jurisdictional dispute not otherwise available to the Board. The Act does not authorize the Board to compel an employer to change his assignment, or a union to renounce an assignment that the employer is willing to give. (Sl. Op., p.23).

The inherent defect in the foregoing statement is that decisions of the Joint Board, or any other private tribunal, would be equally inoperative in causing the employer to change his assignment. Although a court, proceeding under Section 301 of the Act, might decree that the successful union before the Joint Board is entitled to perform specified work and the losing union is not (which is precisely what NLRB determinations under Section 10(k) presently provide), there is no legally enforceable way to require the employer to honor the decree and employ members of the successful union. Further, if the majority opinion actually contemplates that the losing union should "renounce an assignment," what protection does it have when the employer commences his own Section 301 (or Section 303) suit against that union for violating provisions of its collective bargaining agreement?<sup>7/</sup> Clearly then, without express employer acquiescence to the settlement reached by the other parties, there is no realistic or meaningful way to provide a "permanent" resolution to the dispute.<sup>8/</sup>

<sup>7/</sup> As the Supreme Court recognized in CBS, there is no requirement for "... 'substantive symmetry' between § 303(a)(4) on the one hand, and §§ 8(b)(4)(D) and 10(k) on the other," and specifically noted that it "has recognized the separate and distinct nature of these two approaches to the problem of handling jurisdictional strikes. (Citing Juneau Spruce.)" 364 U.S. 584-585.

<sup>8/</sup> The majority has placed undue reliance upon the Supreme Court's statement in CBS that "it is more important to industrial peace that jurisdictional disputes be settled permanently than it is that unfair labor practice sanctions for jurisdictional strikes be imposed upon unions." (Sl. Op., p. 24). The language expresses no more than the view that, in the long run, industrial peace would be best served by the "permanent" settlement of jurisdictional disputes, rather than continually resorting to the provisions of Sections 8(b)(4)(D), 10(k) and 10(l) to deal with recurring jurisdictional strikes and picketing over the same issues. However, this "hope" for permanency has little chance for success unless the adjustment or method includes acquiescence of the employer who, in all future cases, will have the responsibility for making such settlement a reality.

Furthermore, while there may well be a public need for adequate mechanisms to provide enduring resolutions for jurisdictional disputes, the court's deference to the procedures of the Joint Board fails to satisfy that quest. Thus, regarding the thousands of "formal decisions" issued by the Joint Board (amicus curiae brief, Building and Construction Trades Department, pp. 13-14), each of the decisions followed the same procedure applied to the dispute involved in the instant case and, as with all other Joint Board action, "was predicated upon particular facts and evidence ... regarding this dispute and shall be effective on this particular job only." (Emphasis added) (Appendix, pp. 411-412). Hence, the gross volume of decisions rendered by the Joint Board do not, in any way, lend themselves to a "permanent" adjustment of the dispute.

Moreover, while the "Plan" does provide for ad hoc Hearings Panels to resolve disputes on a national basis (Sl. Op., p. 11, Fn. 10), the fact is that only once in the more than twenty years of the "Plan's" operation, has a Hearings Panel been convened and <sup>9/</sup> decision issued--and even that decision failed to "permanently" settle the matter between the unions. Thus, although the Hearings Panel rendered its decision over the installation of ceiling systems on August 24, 1966, this very same issue has continued to be the subject of dispute and had been placed continually on the agenda of the Joint Board for further job decisions, the most recent instance having occurred at the Joint Board meeting of July 30, 1970!

<sup>9/</sup> On November 23, 1965, the National Joint Board referred for national decision the recurring dispute between the Carpenters' and Lathers' Union over two issues: (1) ceiling systems and (2) nailable and screwable metal studs. On August 24, 1966, the Hearings Panel rendered a decision on the first issue only, and referred the second issue back to the two unions for further negotiations.

In this regard, the practice of the NLRB should be contrasted with that of the Joint Board. While the NLRB in most cases likewise limits the scope of its 10(k) determinations to the particular facts giving rise to the dispute, where the record indicates that the dispute is a recurring one and that a broad determination would reduce the likelihood of future disputes over the same issues, the NLRB, in the sound exercise of its discretion, "awards to one of the competing unions all work of the type in dispute which may occur within a specified geographical area." Thus, it is the NLRB, and not other private bodies, which has sought to apply its expertise in providing "permanent" resolutions in work assignment disputes.

### III. THE SUPREMACY OF THE NLRB

The construction which the court has placed upon Section 10(k) requires the NLRB to halt its processes and defer to "union agreements reached after the proceedings are begun." (Sl. Op., p. 24). Such construction, however, misconceives, and undermines the central role which the NLRB was expected to play in the development and uniform administration of our national labor policy. Indeed, while the NLRB's authority has uniformly been regarded as "exclusive" on matters falling within the coverage of the Act, by subordinating it to "union agreements," the majority opinion places private settlements above the public interest which the

<sup>10/</sup> See Union Intervenor's Brief, p. 14, and cases cited thereat. See also Operating Engineers' Local 18 (Mayer Corp.), 184 NLRB No. 15, 74 LRRM 1433, 1435-1436 (1970).

Board alone was entrusted to protect. In addition, the court's construction strips the NLRB of its authority to provide uniformity in handling jurisdictional disputes which, under general notions of preemption, the Board alone was expected to provide through centralized administration.<sup>11/</sup>

The precept of NLRB supremacy over other private methods of adjustment is required by the CBS decision. In CBS, the NLRB argued against the notion that Congress empowered it to decide each jurisdictional dispute on its merits, and in support thereof, the NLRB relied upon the conference report which deleted Senator Morse's proposal authorizing the appointment of an arbitrator. The Supreme Court, in rejecting the NLRB's argument, noted that the deletion of the arbitration provision resulted in "leaving it to the Board alone 'to hear and determine' the underlying jurisdictional dispute" (Emphasis added, 364 U.S. 581). And in fuller explication, the court stated:

The obvious effect of this change was simply to place the responsibility for compulsory determination of the dispute entirely on the Board, not to eliminate the requirement that there be such a compulsory determination. The Board's view of its powers thus has no more support in the history of Section 10(k) than it has in the language of that section. Both showed that the section was designed to provide precisely what the Board has disclaimed the power to provide--an effective compulsory method of getting rid of what were deemed to be the bad consequences of jurisdictional disputes. (Emphasis added, 364 U.S. 582).

<sup>11/</sup> The preemption doctrine recognizes the NLRB as the supreme and exclusive authority providing uniformity in labor matters, since "a multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." San Diego Building Trades Council v. Garmon, 359 U.S. 236, 243 (1959), quoting from Garner v. Teamsters' Union, 346 U.S. 485, 471 (1953).

The foregoing makes it eminently clear that through the comprehensive scheme reflected in the Act, the "bad consequences" of jurisdictional strikes and picketing could be eliminated under the injunctive powers granted to the NLRB under Section 10(1) and, since "the responsibility for compulsory determination of the dispute [was placed] entirely on the Board," it was for "the Board alone" to proceed to eliminate the "bad consequences" of the underlying dispute as well.

The insight to be gleaned from the foregoing is that it is the NLRB's statutory responsibility in proceeding under Section 10(k) to determine that the evidence submitted to it satisfactorily demonstrates that the parties have "agreed upon methods for the voluntary adjustment of, the dispute." <sup>12/</sup> Thus, in exercising its discretion, the NLRB has consistently determined that Joint Board or other private decisions which are not binding upon the employer do not measure up to the "satisfactory evidence" standard which requires that any agreed upon methods of adjustment be "voluntary." And, while the NLRB has specifically encouraged the parties to the Joint Board to operate with "fairness and impartiality" and thereby satisfy the statutory requirements for voluntary and

<sup>12/</sup> Section 10(k), 29 U.S.C. § 160(k) (Emphasis added). As Judge MacKinnon observed, the determination whether the submitted evidence is "satisfactory" and comports with the public interest embodied in the Act "vests the NLRB with discretion in the matter. This discretion is weighed against the overriding duty imposed on the NLRB to prevent any unfair labor practice and to exercise that power unaffected 'by any other means of adjustment.' § 10(a)" (Sl. Op., p. 38).



<sup>13/</sup>  
binding procedures, the NLRB cannot refuse to discharge its responsibilities under Section 10(k) when the parties to the Joint Board or other private tribunals resist such invitation.<sup>14/</sup>

Under this court's majority opinion, the NLRB would now be required to rubberstamp every Joint Board decision, a practice which in other respects was condemned by the Supreme Court in CBS. Adherence to this court's mandate will not only forever foreclose the employer from access to the impartial and reviewable processes of the NLRB, but, even more significantly, would require the NLRB to violate existing precedent regarding "voluntary arbitration procedures."<sup>15/</sup> The NLRB's accommodation of provisions of the Act to

<sup>13/</sup> Thus, in Millwrights' Local Union 1102 (Don Cartage), 154 NLRB 513 (1965), the NLRB recognized that on April 1, 1965, the parties to the "Plan" had established new standards and appeals procedures to resolve jurisdictional disputes. In the context of the case before it, the NLRB noted that the employer responsible for the work assignment was not a member of this newly revised Joint Board and stated: "We cannot ~~now~~ now say, therefore, that the new Joint Board will be able definitely to settle, on the broad basis desired, the jurisdictional dispute between the contending Riggers' and Carpenters' Locals. Nevertheless, we believe that the new Joint Board should be given the opportunity to resolve this dispute on a voluntary basis." (Emphasis added, 154 NLRB, at 517).

<sup>14/</sup> Notwithstanding the elaborate procedures which, in 1965, parties to the "Plan" adopted with the expectation that a revitalized Joint Board would "work to the best interests of the employees, the employers and the nation as a whole" (Millwrights Local Union 1102 (Don Cartage), 154 NLRB 513, 515), the fact is that because of the Joint Board's studied practice of rendering job decisions over disputes where the employer had not agreed to be bound, the National Associated Contractors of America, on September 30, 1969, terminated the "Plan" and withdrew from further participation in its operations. See Construction Labor Report (CLR) 732 A-13; CLR 742, A-1 (12/10/69).

<sup>15/</sup> In keeping with the general principle that full scope should be given to voluntary arbitration procedures, for more than fifteen years the NLRB, under its Spiegelberg doctrine, has indicated that it would defer to the arbitral process if it determines that "the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act." (Emphasis added). Spiegelberg Manufacturing Company, 112 NLRB 1080, 1082 (1969).

private methods of adjustment, denoting the sound exercise of administrative discretion gained in the light of handling vast numbers of cases over a prolonged period of time, should not be lightly set aside. Labor Board v. Gullett Gin Co., 340 U.S. 361, 366 (1951).

<sup>16/</sup>  
In the Local 1905 case, the NLRB quashed the 10(k) notice of hearing, over the employer's objection, after determining that one of the contending unions unequivocally renounced all present and future claims to the disputed work. The Building and Construction Trades Department erroneously relies upon Local 1905 in an effort to show that the NLRB has inconsistently interpreted the phrase "parties in dispute." (Department's Amicus Curiae Brief, pp. 23-24). Although similarly cited in the majority opinion (Sl. Op., p. 25, Fn. 25), the case accords fully with existing NLRB interpretation, and simply stands for the proposition that where a union removes itself as a contending party by voluntarily relinquishing all work claims, there is no longer any dispute between rival trades, crafts or classes of employees, and the NLRB, therefore, has nothing left to resolve.<sup>17/</sup> While such decision will cause the employer to reassess

<sup>16/</sup> Local 1905, Carpet, Linoleum and Soft Tile Layers (Buther and Sweeney Constr. Co.), 143 NLRB 251 (1963).

<sup>17/</sup> It is also clear that if the union which did not receive the assignment decides to abandon the picketing and renounce its claim to the work, or reaches agreement with the union which is performing the work that is satisfactory to the employer, the NLRB also quite properly determines that there is no longer any dispute between "rivals" over the employer's assignment. While such adjustments may or may not be "permanent," the effect of such renunciations or settlements do permit the employer's job to continue and the NLRB, in the interest of conserving the "time and money" of all parties, is certainly warranted in quashing the notice of hearing. Millwrights Local 1102 (Don Cartage), 154 NLRB 513, 518 (1965).



<sup>18/</sup>  
the options available to him, that situation has no bearing on the instant case where the employees, and their respective union, have received an assignment for which they continue to claim the right to perform the assigned work in accordance with the employer's preference.

Finally, while the majority opinion recognized that the NLRB would have discretion to proceed under Section 10(k) where the private "procedure for adjustment was subject to an infirmity that undercut its fairness and reliability" (Sl. Op., pp. 26-27), the court disregards the fact that the NLRB recognized its discretion in just such a manner in processing the instant case. The "Plan" and procedural rules of the Joint Board, expressly provide that its decisions will not apply to an employer who has neither stipulated nor contractually bound himself to the "Plan" or who is unwilling to participate in its proceedings. (See Procedural Rules and Regulations, p. 1, Appendix B, Amicus Curiae Brief of Building and Construction Trades Department). Thus, notwithstanding the fact that the NLRB was exercising its reviewing powers to determine that Joint Board processes were consistent with the general principles applied to all voluntary arbitration procedures (See Spiegelberg

<sup>18/</sup> Thus, the employer may decide to assign the work to the union which prevailed before the private settlement body (such as the Joint Board), or seek out another union whose members will accept the work assignment, or decide that it is in his best interest to assign the work to individual employees who are represented by no union at all.

Manufacturing, supra, note <sup>19/</sup>15) the court now requires the NLRB to place the government's imprimatur upon a Joint Board decision issued in violation of its own rules.

#### IV. CONCLUSION

For the reasons set forth in the NLRB's brief, Circuit Judge MacKinnon's dissenting opinion, and as urged in this brief, the court is respectfully requested to grant reconsideration en banc and, on such reconsideration, to reverse the panel's opinion and enforce the NLRB's order entered in this matter.

Respectfully submitted,



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<sup>19/</sup> The majority opinion, for example, notes that the Joint Board's procedural rules provide "additional avenues to enforcement" (Fn. 24 for the parties to the Joint Board Plan by virtue of the compliance procedures contained therein. The NLRB, however, through expertise acquired by handling numerous Joint Board matters in the course of 10(k) administration has noted that when the compliance procedures break down there is need for NLRB intercession. The NLRB stated that under the Joint Board's rules and regulations "[the Joint Board] will not determine a dispute where, as here, both unions are in non-compliance with said rules, but will direct that the employer may proceed with the disputed work on the basis of its original assignment. We do not regard the refusal to make a determination as an affirmative determination on the merits." (Emphasis added). Lathers' Local Union No. 62 (Belou & Co.), 150 NLRB 21, 25 (1964). See also IBEW Local 728 (Ebasco Services, Inc.), 153 NLRB 873 (1965).